United States District Court
Southern District of Texas
Victoria Division

STATE OF TEXAS, *et al.*,
Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*,
Defendants,
and
VALERIE LAVEUS, *et al.*,
Intervenor-Defendants.

Case 6:23-cv-7

PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER

Four years ago, a former DHS Secretary who had served with then-former-Vice President Biden described 1,000 illegal crossings per day at the Southwest Border as a "relatively bad number" and 4,000 such crossings is a "crisis."[1] Under now-President Biden, that number has ballooned: Border Patrol "[a]gents have been encountering over 10,000 migrants a day since Monday [May 8], and there are no signs of that slowing down with the looming end of Title 42, which is expected to bring an even bigger wave with it."[2] Whatever the product of 2.5 × crisis is, it is happening at the U.S.-Mexico border—and it is projected to get worse.

The Defendants' solution? Delay until the last minute, then issue a policy that ignores the legally required procedure, attempts to erase the limits Congress wrote into the law, and ignores relevant facts that contradict its desired solution. That is, as the saying goes, no way to run a railroad; it is certainly no way to protect the

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1 Tim Hains, *Obama DHS Secretary Jeh Johnson: "We Are Truly In A Crisis" On Southern Border*, REAL CLEAR POLITICS, (Mar. 29, 2019), https://tinyurl.com/4ef9wsys.

2 Adam Shaw and Bill Melugin, *Border Patrol chief authorizes release of migrants into US without court dates as Title 42 ends*, FOX NEWS, (May 11, 2023), https://tinyurl.com/32vfur78.

integrity of the nation's borders. The law demands more of them, and the Court should hold them to what the law demands. Because the Defendants' Parole with Conditions program was adopted without the required procedures, was adopted without considering all the relevant facts, and contradicts the governing law, the Court should either stay its effective date or temporarily enjoin the Defendants from implementing or operating it.

BACKGROUND

I. The INA authorizes a limited parole authority that must be exercised on a case-by-case basis.

The INA gives DHS the power to parole aliens into the United States, but "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A).

Congress adopted the current version of Section 1182(d)(5) as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (abbreviated to the visually offensive but sonically lilting "IIRIRA," pronounced "eye-*ree*-rah"). The changes it made to Section 1182 make plain Congress's intent to constrain sharply the discretion of DHS. Pre-IIRIRA, the INA granted broad parole authority to the Attorney General "under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest." 8 U.S.C. § 1182(d)(5) (1996). IIRIRA amended the INA "by striking 'for emergent reasons or for reasons deemed strictly in the public interest' and inserting 'only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'" IIRIRA, PL 104–208, September 30, 1996, 110 Stat 3009, § 602.

The post-IIRIRA INA strictly limited the conditions under which parole could be granted, and specifically forbade programmatic parole policies, instead requiring that parole be granted "only on a case-by-case basis." 8 U.S.C. § 1182(d)(5). The power is

limited because of Congress's "concern that parole under § 1182(d)(5)(A) was being used by the executive to circumvent congressionally established immigration policy;" IIRIRA therefore "specifically narrowed the executive's discretion ... to grant 'parole into the United States.'" *Cruz-Miguel v. Holder*, 650 F.3d 189, 199 & n.15 (2d Cir. 2011). To squelch even the small chance that this language could be read as anything but a circumscription, Congress entitled this portion of IIRIRA "limitation on use of parole." Pub. L. No. 104-208, 110 Stat. 3009, § 602.

II. The Defendants adopt the Parole with Conditions policy, which paroles illegal immigrants *en masse*.

The policy was issued on May 10, 2023, and scheduled to go into effect simultaneously with the expiration of the Title 42 public-health order—at midnight on May 12.

Under the policy, Defendants will "parole" otherwise illegal immigrants into the United States after an "individual assessment" that will include, among other things, a "biometric identity verification," an evaluation of the alien's "immigration background," and "vetting for any national security or criminal concerns." *Id.* at 5–6. The policy requires Border Patrol to collect and document a physical address but does not appear to require any verification of the legitimacy of the address provided. The alien is required to schedule an appointment with ICE to receive a Notice to Appear and initiate immigration proceedings but may go online to request an NTA by mail. *Id.* at 2. However, the grant of parole under the policy does not place any restrictions on where the alien may go or require electronic monitoring or any other means to track the alien's location once released. The "initial" grant of parole "should generally be for 60 days," but apparently the parole grant may be extended or renewed without limitation. *Id.* at 5. The memo promulgating the policy does not discuss harms to third parties, individuals, or the States; it does not discuss what other alternatives were considered; and it does not justify the policy on any grounds other than overcrowding

of detention facilities as a result of resource constraints. *Id.* at 2–3. And while the policy may not be implemented unless the Border Patrol has apprehended "7,000 noncitizens per day across the [Southwest Border] over a 72-hour period" and permission to use it has been "specifically requested by a sector and authorized by the CBP Commissioner," *id.* at 3–4, the Defendants admit that the former is already the case, *id.* at 7, and have, on information and belief, granted permission to each Border Patrol sector in Texas.

LEGAL STANDARD

"The standard for deciding whether to issue a preliminary injunction is the same standard used to issue a temporary restraining order." *Texas v. United States (100-Day Pause)*, 524 F. Supp. 3d 598, 651 (S.D. Tex. 2021) (citing *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987) (granting TRO against illegal DHS actions). And each of the preliminary injunction requirements are satisfied here.

To obtain a preliminary injunction, the States "must show: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury outweighs any harm that the injunction might cause to the defendant; and (4) that the injunction will not disserve the public interest." *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 288 (5th Cir. 2012). Each factor weighs in the States' favor.

ARGUMENT

I. The States have standing.

First, the States have standing because they are injured financially. The Court has already recognized that the States incur increased education, healthcare, incarceration, and state-services costs from an increase in illegal immigration. *See Texas v. United States (Texas Prioritization)*, 606 F. Supp. 3d 437, 467 (S.D. Tex.

2021); s*ee also Texas v. Biden* (*Texas MPP)*, 20 F.4th 928, 969 (5th Cir. 2021), *cert. granted* 142 S. Ct. 1098 (2022) ("*if* the total number of in-State aliens increases, the States will spend more on healthcare"). And the Fifth Circuit has recognized not only that those harms confer standing upon the States, but that programs like Parole with Conditions are "precisely the sort of large-scale polic[ies] that [are] amenable to challenge using large-scale statistics and figures, rather than highly specific individualized documents," data that "robustly support[s]" the States' standing. *Id.* at 671.

Second, the States have standing because they are "entitled to special solicitude in" when they are suing to protect their "procedural right[s] and ... [their] quasi-sovereign interests." *Massachusetts v. EPA*, 549 U.S. 497, 520 (2007).

II. The Court has jurisdiction.

The INA itself "deprives courts of the power to ... enjoin or restrain the operation of" a small number of its sections: "sections 1221 through 1232." *Biden v. Texas (Texas MPP)*, 142 S. Ct. 2528, 2539 (2022) (cleaned up) (citing 8 U.S.C. § 1252(f)(1)). But the parole power does not rest in one of the gated-off sections, but in Section 1182. And though some portions of the Parole with Conditions purport to derive their authority from section 1225, none of the relief the States seek here would "enjoin or restrain" the "operation" of section 1225. The Court therefore retains its standard power to issue injunctions preventing violations of the law.

III. Texas is likely to succeed on the merits.

A. The memo setting out the program is a substantive rule that was not issued through notice and comment.

Under the APA, rules are subject to notice-and-comment rulemaking unless they fall within one of the APA's exceptions, 5 U.S.C. § 553(b)(A), which "must be narrowly construed." *Texas DAPA*, 809 F.3d at 171 (quoting *Profls. & Patients for Customized*

Care v. Shalala, 56 F.3d 592, 595 (5th Cir. 1995)). The memo wasn't adopted with any notice and comment, and it is not subject to any of the exceptions. It is therefore unlawful.

First, the memo is not a mere policy statement because it imposes legal rights and obligations. Generally, the difference between a rule and a policy statement depends on "two criteria: whether the [agency action] (1) imposes any rights and obligations and (2) genuinely leaves the agency and its decision-makers free to exercise discretion." *Texas DAPA*, 809 F.3d at 171 (cleaned up). A court making that determination must be "mindful but suspicious of the agency's own characterization," and its primary consideration is whether the action "has binding effect on agency discretion or severely restricts it." *Id.*

Here, the memo is certainly imposes rights and obligations by instructing agents how to exercise their discretionary authority, setting criteria for granting parole, affecting the States' obligations to provide public benefits to certain aliens, and establishing a framework for the showing required to parole thousands of aliens into the country. *See*, *e.g.*, *Texas v. United States* (*Texas DACA*), 328 F. Supp. 3d 662, 731 (S.D. Tex. 2018) (DACA is not a policy statement, for some of same reasons). And although the Secretary of DHS retains "discretion" to end the framework established under the memo, the relevant question is whether "*DHS personnel[]"* have "discretion to stray from the guidance," *Texas MPP*, 40 F.4th at 229 (emphasis added), but there is no "evidence of discretion by the individuals processing [parole] applications," *Texas DACA*, 328 F. Supp. 3d at 732. Moreover, the notices announcing the Program are "much more substantive than a general statement of policy," confirming notice-and-comment was required. *Texas MPP*, 40 F.4th at 229.

Second, Defendants cannot escape notice-and-comment requirements under the "good cause" exception. The "good cause" exception to notice-and-comment is narrowly construed and only reluctantly countenanced, to be used only "on a break-

glass-in-case-of-an-emergency basis[.]" *Natl. Horsemen's Benevolent & Protective Assn. v. Black*, 53 F.4th 869, 883 & n.26 (5th Cir. 2022). But here, the glass broke a while ago. After all, the Defendants anticipated a surge in illegal immigration at the Southwest Border of the United States as a result of the shuttering of Title 42 even before the January 30, 2023, announcement that the Title 42 policy would be shuttered. *See* Press Release, DHS Continues to Prepare for End of Title 42; Announces New Border Enforcement Measures and Additional Safe and Orderly Processes (Jan. 5, 2023). Therefore, the steady rising of border crossings—of which the Defendants are aware—hardly rises to the level of sudden or urgent action that overcomes the strong presumption of notice-and-comment. And whatever exigencies supposedly created good cause to abandon notice-and-comment are entirely of the Defendants' own making; the Defendants were perfectly capable of issuing notice of, receiving comment on, and finalizing other rules between the announcement of Title 42's end and its actual end date. See Circumvention of Lawful Pathways, 88 Fed. Reg. 11,704 (proposed Feb. 23, 2023) (to be codified at 8 C.F.R. pts 208 and 1208); Circumvention of Lawful Pathways (May 10, 2023) (unpublished final rule) (to be published on May 16, 2023), https://public-inspection.federalregister.gov/2023-10146.pdf.

B. The *en masse* parole authorized by the program exceeds the Defendants' statutory authority.

The Supreme Court recently emphasized that the federal government's parole power is "not unbounded: DHS may exercise its discretion to parole applicants 'only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'" *Texas MPP*, 142 S. Ct. at 2543 (quoting 8 U.S.C. § 1182(d)(5)(A)); *accord id.* at 2549 (Kavanaugh, J., concurring). The Parole with Conditions program flouts that limitation, justifying parole based on resource limitations. But that runs headlong into the INA's language and Fifth Circuit precedent barring the Defendants' reading.

Although it claims to require analysis and parole on a case-by-case basis, the Defendants' new policy is actually an attempted avoidance of the INA's prohibition of programmatic parole. The Defendants justify the "humanitarian" and "public benefit" of the Parole with Conditions program based on resource limitations. But unlike the statutory factors, which focus on particular individuals and the particular costs and benefits of paroling them, resource limitations are inherently blind to individual circumstances. Whether Alien A is paroled instead of Alien B has nothing to do with whether one of them has a humanitarian need to be admitted to the United States or whether the nation would particularly benefit from one of them being present; it depends entirely on their place in line. Resource limitations have nothing to do with the individual alien's characteristics; they have everything to do with the Defendants' characteristics. In short, if there is no urgent humanitarian reason or significant public benefit to parole Alien A into the United States if he is first in line in the morning when ICE's holding tank is empty, there is no such reason or benefit if he is directly behind the alien whose detention depletes ICE's available detention resources. Alien A is paroled, that is, because ICE has programmatically defined the depletion of detention resources as a "significant public benefit" or "urgent humanitarian need" that warrants parole.

Accordingly, the Parole with Conditions program runs into the teeth of the Fifth Circuit's holding that programmatic parole violates § 1182(d)(5)(A): "Deciding to parole aliens *en masse* is the opposite of … case-by-case decisionmaking." *Texas MPP,* 20 F.4th at 942. Indeed, "the whole point of the 'case-by-case' requirement that Congress added in IIRIRA" was to prevent DHS from "parol[ing] aliens *en masse*." *Id.* at 997. As the Fifth Circuit has held, the "[q]uintessential modern uses of the parole power include, for example, paroling aliens who do not qualify for an admission category but have an urgent need for medical care in the United States and paroling aliens who qualify for a visa but are waiting for it to become available." *Id.* at 947.

Those are necessarily individual factors that must be evaluated on a case-by-case basis; they have nothing to do with the Defendants or their resources. The Parole with Conditions program does just what IIRIRA was designed to prevent.

C. The Parole with Conditions policy is arbitrary and capricious.

The Parole with Conditions policy is also arbitrary and capricious for several independently sufficient reasons.

First, the Memo utterly neglects to consider State reliance interests on the previous regime and the harm to States in the *en masse* parole of aliens, causing harms that are further discussed below.

Second, Defendants have failed to analyze and consider how their own failure to maintain detention capacity affects the purported need to parole aliens into the United States. For example, at the same time Defendants claim that their detention facilities are over capacity, the Administration's Fiscal Year 2024 budget includes "a reduction of 9,000 adult [Average Daily Population detained] from the FY 2023 Enactment," which would decrease DHS's alien detention capacity by more than 25%.[3] The federal government further affirmatively degraded its detention capacity by canceling contracts with private detention facilities and by closing detention facilities.[4] In addition, even where DHS has capacity, it has often failed to utilize it. For example, an April 12, 2022, DHS Inspector General Report explains how DHS acquired detention capacity from hotels through no-bid contracts and then inexplicably failed to use it: indeed, DHS "spent approximately $17 million for hotel space and services at six hotels that went largely unused between April and June

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[3] DEPT. OF HOMELAND SEC., FY 2024 Budget in Brief, https://tinyurl.com/2p8v5yyx, p. 39.

[4] Eileen Sullivan, *Biden to Ask Congress for 9,000 Fewer Immigration Detention Beds*, NEW YORK TIMES (Mar. 25, 2022), https://nyti.ms/3vOI00F; Priscilla Alvarez, *Biden administration to close two immigration detention centers that came under scrutiny*, CNN (May 20, 2021), https://cnn.it/3KcxGol.

2021" and "did not adequately justify the need for the sole source contract to house migrant families."[5]

Third, the Defendants did not explore other alternatives or explain why they selected this one—which breaks the law. In particularly the Defendants did not explain why they did not consider an expansion of the Migrant Protection Protocols program that still remains in effect.

Fourth, the Defendants neither considered nor explained why they did not account for relevant considerations such as:

- How the Defendants can realistically determine whether persons considered for parole under "exigent circumstances" are risks to national security or pose risks of committing serious crimes in the United States;
- How illegal aliens paroled into the United States who break their promise to appear can be located, apprehended, and removed;
- Alternatives to this almost literal catch-and-release program;
- Whether and to what extent the policy creates incentives for even more illegal aliens to travel to the Southwest Border, not only further increasing the number—and perhaps rate—of illegal immigrants entering the country but in fact exacerbating the very "exigent circumstances" the policy is designed to combat.

Any of these reasons would be sufficient to set the policy aside. All of them combined are more than sufficient to do so.

IV. There is a substantial threat of irreparable harm.

The States, using Texas as an example, will suffer irreparable harm without a TRO. The States "bear[] many of the consequences of unlawful immigration," *Arizona*

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[5] DHS Off. of Inspector Gen., *ICE Spent Funds on Unused Beds, Missed COVID-19 Protocols and Detention Standards while Housing Migrant Families in Hotels* at 3, 5 (April 12, 2022) https://www.oig.dhs.gov/sites/default/files/assets/2022-04/OIG-22-37-Apr22.pdf.

v. United States, 567 U.S. 387, 397 (2012), and those consequences here are both harmful and irreparable. The burdens are not merely hypothetical and will be significantly increased by Defendants' current mass parole of aliens into the United States. The States use Texas as an example.

First, the release of illegal aliens into Texas will cause it to "incur significant costs in issuing driver's licenses." *Texas v. United States (Texas DAPA)*, 809 F.3d 134, 155 (5th Cir. 2015). Texas law subsidizes driver's licenses, including for noncitizens who have "documentation issued by the appropriate United States agency that authorizes [them] to be in the United States." *Id.* (quoting Tex. Transp. Code § 521.142(a)). Aliens paroled into the United States are eligible for subsidized driver's licenses; by increasing the number of aliens who can secure subsidized licenses, the Defendants impose financial harm on Texas. Exh. E; *Texas DAPA*, 809 F.3d at 155.

Second, the *en masse* parole of aliens into Texas will incentivize increased illegal immigration. It is not just basic economics and common sense; DHS and federal courts have concluded that incentives matter: Increasing the likelihood that an alien will be released into the United States increases the number of aliens who attempt to enter the United States illegally. *Texas v. Biden (Texas MPP)*, 554 F. Supp.3d 818, 834, 847–48 (N.D. Tex. 2021); *cf. Zadvydas v. Davis*, 533 U.S. 678, 713 (2001) (Kennedy, J., dissenting). ("An alien … has less incentive to cooperate or to facilitate expeditious removal when he has been released, even on a supervised basis, than does an alien held at an [ICE] detention facility."). Both the increased numbers of illegal aliens present in Texas immediately due to increased paroles and future increases in those numbers due to new incentives to attempt illegal entry will force Texas to spend additional funds on law enforcement, education, and healthcare—often due to federal mandates. *See, e.g.*, *Texas MPP*, 20 F.4th at 969, *rev'd on other grounds* 142 S. Ct. 2528 (2022).

For example, Texas must spend state monies on Emergency Medicaid, including for unauthorized aliens. 42 C.F.R. § 440.255(c). Texas's emergency medical providers deliver tens of millions of dollars in medical services to illegal aliens each year. These costs are not fully reimbursed by the federal government or the aliens themselves. *See* Exh. B. And illegal aliens in Texas are far more likely to be uninsured and below the poverty line.[6] Illegal aliens in Texas are thus much more likely to use public services and force the State to incur significant expense. If more illegal aliens enter the State, that will increase the costs of the State's healthcare system.

Furthermore, under federal law, aliens granted parole or asylum become eligible for a variety of benefits after five years in the United States.[7] These benefits include Medicaid; SNAP (commonly referred to as "food stamps"); and TANF (commonly referred to as "welfare" payments). Because these benefits are paid by Texas state agencies and are partially financed from Texas's state budget, the *en masse* parole of aliens into Texas will increase its costs because increased numbers of aliens receiving grants of parole or asylum will cause more individuals to claim benefits.

The Emergency Medicaid program costs Texas tens of millions of dollars annually. The Texas Family Violence Program provides emergency shelter and supportive services to victims and their children in Texas. Texas spends more than a million dollars per year on the Texas Family Violence Program for services to illegal aliens. The Texas's Children's Health Insurance Program offers low-cost health

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6 *See, e.g.*, Unauthorized Immigrant Population Profiles, Migration Policy Institute, https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/TX (69% of illegal aliens in Texas are uninsured and 29% are below the poverty level).

7 *See* 8 U.S.C. § 1641(b)(2), (4) (defining a "qualified alien" as "an alien who is paroled into the United States … for a period of at least 1 year" or "an alien who is granted asylum"); 8 U.S.C. § 1612 (2)(L) (making eligible for food stamps aliens who have been "'qualified aliens' for a period of 5 years or more"); 8 U.S.C. § 1613(a) (making qualified aliens eligible for "any Federal means-tested public benefit ... 5 years" after "the date of the alien's entry into the United States").

coverage for children from birth through age 18. Texas spends tens of millions of dollars each year on CHIP expenditures for illegal aliens. Further, Texas faces the costs of uncompensated care provided by state public hospital districts to illegal aliens which results in expenditures of hundreds of millions of dollars per year. *See* Exh. B.

Similarly, Texas and its subsidiary local governments pay for the costs of educating both illegal-immigrant minors and the children of illegal immigrants. *Plyler v. Doe*, 457 U.S. 202, 230 (1982) (education mandate). Those costs run to the hundreds of millions of dollars per year. Exh. C. And Texas and its subsidiary local governments pay tens of millions of dollars each year to incarcerate illegal-alien criminals. Exh. D.

Due to sovereign immunity, Texas cannot recover damages from the federal government. Texas's unrecoverable injuries thus constitute irreparable harm. *See*, *e.g.*, *Texas MPP,* 20 F.4th at 1001; *East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 677 (9th Cir. 2021). That's why the Fifth Circuit has squarely recognized economic harms resulting from unlawful federal immigration policy to constitute irreparable harm. *See Texas DAPA*, 809 F.3d at 186.

V. The balance of the equities and the public interest favor a TRO.

The remaining factors also support issuing a TRO motion. In general, the balance-of-equities and public-interest elements merge when government interests are play, and the Court should consider them together. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (merging these two elements); *Texas DAPA*, 809 F.3d at 187 (same). It should weigh whether "the threatened injury outweighs any harm that may result from the injunction to the non-movant" and whether "the injunction will not undermine the public interest." *Valley v. Rapides Parish Sch. Bd.*, 118 F.3d 1047, 1051, 1056 (5th Cir. 1997).

Here, the balance is particularly in favor of the States. A TRO prohibiting the Defendants from paroling and releasing aliens *en masse* into the United States will not only avoid harm to the States, but also prevent the Executive Branch from perpetrating the harm of violating federal immigration law. Those harms to the federal government—as well as the harms to the State—can be completely averted by staying, restraining, the Parole with Conditions program or entering a preliminary injunction. This case is truly rare in that a TRO will avoid harms to all sides. Here there is no balancing to be had, because all the harms are on one side of the scale.

The public interest also favors the States: "The 'public interest is in having governmental agencies abide by the federal laws that govern their existence and operations.' And 'there is generally no public interest in the perpetuation of unlawful agency action.'" *Wages & White Lion Invs., LLC v. FDA*, 16 F.4th 1130, 1143 (5th Cir. 2021). Because the Parole with Conditions program violates the INA and the APA multiple times over, the public interest favors enjoining it.

VI. A TRO should apply nationwide.

Should the Court issue a TRO, that order should be effective nationwide, not just in Texas (whose evidence supports this motion) or the States (who bring this motion). "[T]he Fifth Circuit's precedent in this area is applicable and controlling." *Texas 100-Day Pause*, 524 F. Supp. 3d at 667. As in other immigration cases, "a geographically-limited injunction would be ineffective" since once migrants cross into the United States, they are "free to move among states." *Texas DAPA*, 809 F.3d at 188. Further, "immigration policy" is supposed to be "a comprehensive and unified system." *Id.* And because Texas has the largest share of the southwestern border, a TRO limited to Texas in particular would merely divert the most direct and immediate of the harms caused by the program to Texas's sister States.

CONCLUSION

The States respectfully request that the Court stay or delay the effective date of the Parole with Conditions program or issue a temporary restraining order preventing the Defendants from implementing or operating that program.

Dated May 12, 2023. Respectfully submitted.

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CERTIFICATE OF CONFERENCE

On May 12, 2023, Defendants' counsel Erez Reuveni informed Texas's counsel that the Defendants oppose this motion. Texas's counsel did not receive a response from the Intervenor Defendants' counsel before filing.

/s/ Leif A. Olson
LEIF A. OLSON

CERTIFICATE OF SERVICE

I certify that on, this May 12, 2023, this supplemental complaint was filed through the Court's CM/ECF system, which served it upon all counsel of record.

/s/ Leif A. Olson
LEIF A. OLSON

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1300 Pennsylvania Avenue, NW
Washington, DC 20229

U.S. Customs and Border Protection

HQBOR 90/16.38

MAY 10 2023

TO: All Chief Patrol Agents
All Directorate Chiefs

MEMORANDUM FROM: Raul L. Ortiz [redacted]
Chief
U.S. Border Patrol

SUBJECT: Policy on Parole with Conditions in Limited Circumstances Prior to the Issuance of a Charging Document (Parole with Conditions)

To outline how U.S. Customs and Border Protection (CBP) utilizes the longstanding authority under section 212(d)(5) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(d)(5), to temporarily parole certain noncitizens on a case-by-case basis for urgent humanitarian reasons or for significant public benefit. This memorandum describes the policy when that authority may, in certain circumstances, be used to consider individuals for parole after United States Border Patrol (USBP) has conducted an inspection of the noncitizen and prior to the issuance of a charging document where that parole is subject to the imposition of conditions on parole, as contemplated in the INA (hereinafter, Parole with Conditions). Specifically, this policy addresses when parole is conditioned on a noncitizen, within 60 days, scheduling an appointment to appear at an U.S. Immigration and Customs Enforcement (ICE) facility for the initiation of appropriate removal proceedings or requesting service, via a designated online location, of a Notice to Appear (NTA) by mail. This document describes the general policy of when such paroles may be considered and continues to require that each parole be considered individually, based on the facts and circumstances known to the Border Patrol Agent (BPA) at the time of processing. All paroled noncitizens will go through appropriate vetting and national security checks.

USBP conducts an inspection of each noncitizen it apprehends or arrests consistent with its authorities, including INA § 287, 8 U.S.C. § 1357 and INA § 235(a), 8 U.S.C. § 1225(a), often referred to as "processing." Processing noncitizens includes steps such as, among other things, identification of the noncitizen, review of immigration and criminal history, an assessment of any national security concerns, and an individualized evaluation of what processing pathway is most appropriate for the individual noncitizen, such as removal proceedings under INA § 240, 8 U.S.C. § 1229a; expedited removal; reinstatement of removal; permitting the individual to voluntarily withdraw their application for admission; and/or parole. This policy provides general guidance on when BPAs may consider parole for an individual who the agent expects is otherwise amenable for removal proceedings under INA § 240, 8 U.S.C. § 1229a. This

EXHIBIT A

memorandum in no way removes agents' discretion to examine all appropriate processes for any particular noncitizen.

Pursuant to section 212(d)(5)(A) of the INA, 8 U.S.C. § 1182(d)(5)(A), the Secretary of Homeland Security has the discretionary authority to parole applicants for admission into the United States "temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." As part of an overall inspection of a noncitizen under INA § 235(a), 8 U.S.C. § 1225(a), CBP may exercise its discretion to parole a noncitizen on a case-by-case basis into the United States, including during the initiation of or to facilitate ICE's initiation of removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a. Parole with Conditions provides a processing mechanism to allow for more expeditious processing of individuals who agents determine would be appropriate for section 240 removal proceedings.

This memorandum describes a policy concerning when CBP may exercise its discretionary parole authority for urgent humanitarian reasons or a significant public benefit, including where there are conditions requiring the expeditious processing of noncitizens in exigent circumstances in order to ensure (1) appropriate and safe conditions for the health and safety of individual noncitizens in custody and (2) USBP's continued ability to carry out its critical border security and enforcement mission. During periods of sustained high encounter numbers, it is significantly more efficient for USBP to process individuals, consistent with INA § 235(a), 8 U.S.C. § 1225(a), for Parole with Conditions as opposed to issuing an NTA or other charging document at the time of encounter. Those subject to Parole with Conditions are not simply released into the community; they are required to schedule an appointment with ICE for the initiation of section 240 removal proceedings, as appropriate, or, at a designated online location, request service of an NTA by mail.

Parole with Conditions is a tool that should only be used when one of the limited triggers below are met and only on a case-by-case individualized review of each noncitizen. Parole with Conditions permits CBP to prioritize the health and safety of individual noncitizens in its custody through reducing overcrowding, and to maintain adequate enforcement resources along the border to deter the efforts of criminal organizations and traffickers and intercept persons seeking to enter the United States unlawfully. It also allows for USBP to maintain safe and humane holding conditions, compliant with all applicable court orders and other legal obligations, for each noncitizen in its custody. It should be used only where USBP determines that there are urgent humanitarian reasons that warrant parole of a particular person, given the health and safety of individuals in custody, or that there is significant public benefit in paroling the particular person in order to allow for USBP to continue to process those it has in its custody or utilize its limited personnel to process and maintain border security.

Parole with Conditions will be utilized with the other steps USBP has already taken to ensure that processing is as efficient as possible. For instance, USBP has streamlined the NTA/on own recognizance (OR) process, while ensuring legal sufficiency for processing. Moreover, USBP has taken steps to automate the A-file processes and to make forms electronic where possible to further reduce processing times. With the rollout of mobile field processing, USBP has further provided agents with tools to improve processing times. Additionally, adding Border Patrol

Processing Coordinators who perform administrative work in supporting BPAs and engaging in a contract for data entry processors has allowed USBP to focus its BPA time and resources to its important border mission and immigration officer functions. USBP has taken steps to increase its short-term holding capacity. For example, USBP has opened new soft sided facilities and other facilities that allow for initial processing outside USBP stations. USBP continues to use all of its resources to achieve its mission needs, using remote agents for virtual processing, while also receiving assistance where available, from the immigration officers in Office of Field Operations for their processing of noncitizens on the Southwest border (SWB), the U.S. Department of Homeland Security (DHS) Volunteer Force, which permits federal employees to assist CBP in processing noncitizens along the SWB, and utilizing Department of Defense personnel to assist in non-immigration officer functions, such as data entry and warehouse duties.

Notwithstanding these efforts, USBP's resources, including personnel and physical space and equipment, are finite. USBP still needs additional mechanisms to ensure that individual noncitizens are processed expeditiously and released from or transferred out of USBP custody in a safe, swift, humane, and orderly fashion, in order to provide for appropriate and safe conditions for noncitizens.

It is the policy of CBP and USBP to hold noncitizens in appropriate short-term holding conditions upon apprehension, consistent with all applicable court orders and other legal obligations. It is important to ensure that conditions of short-term custody are appropriate for the nature and length of detention. USBP makes every effort to hold noncitizens for the least amount of time required for their processing, transfer, release, or repatriation as appropriate and as operationally feasible. This is because, as USBP's facilities reach capacity, it becomes more difficult to ensure the safety, health, and security of individual noncitizens, monitor medical needs, sanitation, mental health considerations, and other important factors for appropriate short-term custody conditions.

CBP understands that the DHS Office of Health Security has assessed that efforts to reduce overcrowding in DHS facilities to avoid preventable harm and mitigate health and welfare risks to both noncitizens and the DHS workforce should be prioritized.

Moreover, there are requirements such as *Flores*, regarding treatment of minors in DHS custody, and *Doe*, requiring certain detention conditions for those in custody longer than 48 hours in the Tucson sector, which mandate particular conditions for those in CBP custody. USBP recognizes that short-term custody conditions may have a disproportionate impact on different populations such as those with medical conditions or other vulnerabilities. Therefore, it is USBP's policy to apply the most appropriate processing pathway for an individual noncitizen, taking into account all appropriate factors including short-term holding conditions and the impact of conditions that could potentially impact the safety, health, and security of noncitizens in CBP custody.

Approval Process

Use of Parole with Conditions is not authorized unless it is specifically requested by a sector and authorized by the CBP Commissioner. In no circumstance does the authorization to apply Parole with Conditions for a particular sector mean that all noncitizens in a particular sector should be

paroled. Instead, it simply authorizes the BPA inspecting an individual noncitizen to consider one of several processes. As explained more fully below, the decision to parole a noncitizen must still be made on a case-by-case individualized basis, examining all of the facts and circumstances at the time of the noncitizen's inspection, and only if there is an urgent humanitarian reason, such as ensuring the safety, health, and security of the individual noncitizen, or significant public benefit justifying parole.

A sector may request authorization for the use of Parole with Conditions on a case-by-case individualized basis from the Commissioner due to exigent circumstances if one of the following exists:

- A sector or centralized processing center's (CPC) capacity in custody total exceeds 125%; OR
- USBP has apprehended 7,000 noncitizens per day across the SWB over a 72-hour period; OR
- The average time-in-custody (TIC) for noncitizens is over 60 hours.

Use of Parole with Conditions is only authorized during exigent circumstances, and as such may only be utilized to the extent necessary. If a sector or CPC reaches 95% capacity, then Parole with Conditions should not be utilized in that sector and other Title 8 processing pathways should be utilized. Once a sector or CPC is at 95% capacity, the concerns regarding health and safety of noncitizens in short-term custody are more likely mitigated for the reasons discussed below.

Based on USBP's long experience and expertise, USBP expects that the circumstances listed above reflect situations where it will become increasingly difficult for USBP to process noncitizens as quickly as they are apprehended while ensuring that custody conditions are consistently safe, humane, and orderly and consistent with applicable court orders and other legal obligations.

As short-term holding conditions become more crowded, USBP faces increasing challenges regarding maintenance of sanitation, medical needs, and mental health of noncitizens, among other short-term custody standard considerations. These circumstances do not require the parole of any particular noncitizen but instead are factors considered that USBP determines it is appropriate to request the use of Parole with Conditions from the Commissioner for urgent humanitarian reasons in addition to considering other processing pathways. Moreover, short-term custody conditions remain only one factor in the determination to parole. As discussed above, USBP continues to fully assess each individual on a case-by-case basis to determine the best processing pathway for that particular individual.

Approval of Parole with Conditions may be granted only on a sector-by-sector basis, and Parole with Conditions may not be used for noncitizens transferred laterally from a sector that has not met the threshold criteria above. Additionally, approval for use of Parole with Conditions is time limited, must be reassessed every week by the Commissioner or Deputy Commissioner, and is expected to be used sparingly even when approved. Lastly, CBP must obtain a valid mailing address using an address validation tool for every noncitizen paroled under this authority.

Nongovernmental organization and shelter addresses are not sufficient for a noncitizen address. USBP is not authorized to process noncitizens via Parole with Conditions when these criteria are not met, and when a sector or CPC is below 95% capacity, absent extraordinary circumstances as determined by the Commissioner.

The initial grant of Parole with Conditions should generally be for 60 days, for the purpose of allowing the noncitizen to schedule an appointment to appear at an ICE facility for the initiation of appropriate removal proceedings or to request service of an NTA by mail, via a designated online location. Parole is automatically terminated upon expiration of the period for which parole was authorized.

Individual Assessment

Each noncitizen is individually processed consistent with INA § 235(a), 8 U.S.C. § 1225(a), after encounter. This inspection process includes, but is not limited to, an assessment of the individual's identification and immigration background, review and vetting of any national security or criminal concerns, and consideration of which immigration processing pathway is best applicable to the noncitizen. This memorandum describes when Parole with Conditions may be appropriate in advance of the issuance of an NTA where the BPA expects that section 240 removal proceedings is likely the appropriate pathway.

Once the Parole with Conditions initial criteria are met, the decision to parole any individual noncitizen must be assessed on a case-by-case, individualized basis.

Prior to a noncitizen's processing via Parole with Conditions, CBP must conduct biometric identity verification. The BPA making determinations regarding Parole with Conditions must evaluate any potential national security and public safety concerns. Any assessment must consider all of the facts and circumstances known to the BPA at the time, including but not limited to, the noncitizen's immigration history, criminal history, community or family ties, medical concerns, role as a caregiver or provider, and other factors known to the BPA. The assessment may begin as early as the initial encounter in the field, and there is no limitation on the time period in which this individual evaluation must occur. BPAs must make determinations about national security and public safety based on the facts and circumstances known at the time of processing.

In addition, the BPA must consider whether, given the time the individual has been in custody, and the availability of ICE detention space, there is an urgent humanitarian reason or significant public benefit to parole the individual from custody, such as where a noncitizen has medical, mental health, or other care needs that cannot reasonably be provided in USBP custody given the prolonged time in custody due to encounter numbers. Additionally, because BP personnel and resources are finite, BP must consider whether processing personnel and resources are necessary to process other noncitizens in BP custody or accomplish enforcement actions that are immediately critical to border security for the greater public benefit. If so, the individual may be considered for Parole with Conditions.

USBP must collect and document a physical address for each noncitizen processed via parole with Conditions. In doing so, USBP is making a determination to temporarily pause the completion of the paperwork necessary for the initiation of removal proceedings under INA § 240, 8 U.S.C. § 1229a, which will instead be completed at a later date. It is expected that the individual noncitizen would receive the same initiation of removal proceedings pursuant to INA § 240, 8 U.S.C. § 1229a, regardless of whether the completion of that paperwork was to occur.

Cases in Which Parole with Conditions May Not Be Utilized

Parole with Conditions may not be used for noncitizens who, based on an individualized assessment, pose a national security risk, unmitigable flight risk, public safety threat, or who claim to be, are suspected to be, or are determined to be unaccompanied children as defined by 6 U.S.C. § 279(g)(2) or appear likely subject to the mandatory detention requirements of INA § 236(c), 8 U.S.C. § 1226(c), if processed for removal proceedings pursuant to INA § 240, 8 U.S.C. § 1229a.

Subsequent Processing

CBP and ICE will equally share responsibility and work jointly to streamline and complete charging document issuance for individuals processed via Parole with Conditions. The final processing and placement into removal proceedings pursuant to INA § 240, 8 U.S.C. § 1229a is expected to utilize the standard processing, regardless of whether that paperwork occurs as a part of the Parole with Conditions processing or another pathway.

CBP is closely coordinating with ICE on this policy to ensure appropriate communication regarding those CBP is processing via Parole with Conditions and will be jointly responsible for the same. CBP understands that noncitizens will either check in with ICE for an NTA or receive an NTA by mail, upon request. CBP also understands that in circumstances in which DHS processes noncitizens for Parole with Conditions, DHS will make a separate, independent determination, after processing the individual for appropriate removal proceedings, whether to release the individual on parole during the pendency of such proceedings.

CBP must notify ICE in writing each time Parole with Conditions is authorized in a sector, with information regarding data and statistics. Such notification must occur before processing for Parole with Conditions begins in the authorized border sector(s).

CBP will continuously coordinate with ICE and understands that ICE will be issuing guidance to its operators based on this policy in the near term.

This policy, which may be modified, superseded, or rescinded at any time without notice, is for CBP internal use only and is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, by any party. Moreover, as a general statement of policy and agency organization, procedure, or practice, this policy is not subject to the Administrative Procedure Act's requirement of notice and comment.[1] But, even if it were, the

[1] 5 U.S.C. § 553(b)(A).

situations in certain sectors are quickly evolving into exigent circumstances, constituting good cause for bypassing notice and comment rulemaking, as contrary to the public interest.[2] Encounters reached an all-time high of 2.2 million for noncitizens attempting to cross the SWB between ports of entry and without authorization in Fiscal Year 2022 and remain extremely high. The health, safety, and security of noncitizens in USBP custody is paramount to USBP's ability to effectively carry out its mission to secure the border, which in turn is important to protecting public safety. Moreover, on Thursday, May 11, 2023, at 23:59 ET, the Centers for Disease Control and Prevention's (CDC) Title 42 public health Order will end. For the past 7 days, USBP has averaged over 8,750 encounters per day. This is over double the average daily encounters of 4,285 in May of 2019, the highest month of the 2019 surge. Even with significant personnel along the SWB, a significant detention capacity, and interagency resources supporting the effort, this situation requires urgent action.

cc: Corey Price, Executive Associate Director, ICE Enforcement and Removal Operations

[2] 5 U.S.C. § 553(b)(B); *see also Jifry v. F.A.A.*, 370 F.3d 1174, 1179-80 (D.C. Cir. 2004); *Haw. Helicopters Operators Ass'n v. F.A.A.*, 51 F.3d 212, 214 (9th Cir. 1995).

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

STATE OF TEXAS, ET AL.;	)	
Plaintiffs,	)	
v.	)	Case No. 1:18-cv-00068
UNITED STATES OF AMERICA, ET AL.;	)	
Defendants,	)	
and	)	
KARLA PEREZ, ET AL.;	)	
STATE OF NEW JERSEY,	)	
Defendants-Intervenors.	)	

DECLARATION OF SUSAN BRICKER

1. My name is Susan Bricker. I am an adult and competent to testify. The information and opinions contained in this declaration are based upon my personal knowledge, my review of the relevant documents, and my knowledge, skills, training, and experience.

2. I am currently the manager (Manager V) of the Health Program Outcomes and Epidemiology Team ("HPOE") within the Office of Data, Analytics and Performance ("DAP") (the office formerly known as the Center for Analytics and

EXHIBIT B

Decision Support -CADS) at the Texas Health and Human Services Commission ("HHSC").

3. Except for a brief eight-month period in 2014 when I worked in the private sector, I've been employed at HHSC since 2007. In that time, I have worked as an Epidemiologist II (2007-2012), Research Specialist V (2012-Jan. 2014), a Research Specialist V (Sept. 2014-Apr. 2018), a Program Specialist VII (May 2018-May 2021), and Manager V (June 2021-current). The HPOE Team conducts and/or coordinates legislative and HHS-directed research on health care utilization, demographic trends, and enrollment patterns for the state's health care and human service programs.

4. In 2007, as part of the 2008-2009 General Appropriations Act, the Texas Legislature required HHSC to report the cost of services and benefits provided by HHSC to undocumented immigrants in the State of Texas. This report, also known as the Rider 59 Report, was first completed by HHSC in 2008. Due to numerous requests for more recent information following the issuance of the 2008 report, the Rider 59 Report was updated in 2010, 2013, 2014, 2017, and 2021. The Rider 59 Report completed in 2021 covered state fiscal year (SFY) 2019.

5. HHSC provides three principal categories of services and benefits to undocumented immigrants in Texas: (i) Texas Emergency Medicaid; (ii) the Texas Family Violence Program (FVP); and (iii) Texas Children's Health Insurance Program (CHIP) Perinatal Coverage (a/k/a "CHIP Perinate"). Undocumented

immigrants also receive uncompensated medical care from public hospitals in the State.

6. In September 2022, HHSC updated the methodology for calculating the fraction of the Texas' Medicaid Type Program 30 (Emergency Medicaid) clients and CHIP Perinate clients that are likely to be undocumented immigrants. The newer methodology, described in paragraphs 7 and 9, provides the lower and upper bound for the estimated cost of services provided to undocumented immigrants. These estimates are calculated for calendar years (CY) 2019 through 2022. Due to the change in methodology and the shift from state fiscal year to calendar year, the current estimates will not match the estimates provided in previous testimony.

7. Emergency Medicaid is a federally required program jointly funded by the federal government and the states. The program provides Medicaid coverage, limited to emergency medical conditions including childbirth and labor, to undocumented immigrants living in the United States. Because HHSC Medicaid claims data do not conclusively identify an individual's residency status, the portion of Emergency Medicaid payments attributable to undocumented immigrants must be estimated. As in previous years, the U.S. Census Bureau's American Community Survey (ACS) is used to estimate the percentage of non-U.S. citizen reproductive-age females in Texas who have not attained some form of legal permanent resident status. Attached as Exhibit 1 is a document that explains the methodology HHSC utilized to obtain estimates derived from the Census. It is the same methodology previously relied upon by HHSC for the Rider 59 Report and, in the current report, is used to

calculate the lower bound estimate for the fraction of Emergency Medicaid services provided to undocumented immigrants. The upper bound estimate for the fraction of Emergency Medicaid services provided to undocumented immigrants uses enrollment data collected by the Texas Integrated Eligibility Redesign System (TIERS). It is based on the percentage of Emergency Medicaid clients with 'UN' (for "undocumented") alien status among individuals that did not have a null/blank value for their Alien Type Code in TIERS. The total estimated cost to the State for the provision of Emergency Medicaid services to undocumented immigrants residing in Texas was between $78 and $116 million in CY 2019; between $58.5 and $88.3 million in CY 2020; between $61.3 and $9.6 million in CY 2021; and between $44.9 and $72.2 million in CY 2022.[1] Attached as Exhibit 2 is a report providing detailed information and data sources for these calculations.

8. The Family Violence Program contracts with non-profit agencies across the State to provide essential services to family violence victims, including undocumented immigrants, in three categories: shelter centers, non-residential centers, and Special Nonresidential Projects. Because the FVP does not ask individuals about their residency status, the portion of the FVP's expenditures attributable to undocumented immigrants must be estimated. Attached as Exhibit 1 is a document that explains the methodology HHSC utilized to obtain the estimates provided in this declaration. It is the same methodology relied upon by HHSC for

[1] Administrative claims and MCO encounter data for CY 2022 were downloaded on January 11, 2023. Claims and encounter data are subject to an 8-month time lag for claims adjudication. Therefore, expenditures shown for client services in CY 2022 do not reflect complete expenditure data for the year.

EXHIBIT B

preparing internal estimates and for preparation of the Rider 59 Report. The total estimated cost to the State for the provision of direct FVP services to undocumented immigrants residing in Texas was $1.2 million in SFY 2007, $1.3 million in SFY 2009, $1.3 million in SFY 2011, $1.4 million in SFY 2013, $1.0 million in SFY 2015, $1.2 million in SFY 2017, and $1.0 million in SFY 2019. New estimates have been calculated for CY 2019 through 2022. The estimated costs for the provision of direct FVP services to undocumented immigrants residing in Texas was $1.1 million in CY 2019, $1.4 million in CY 2020, $1.6 million in CY 2021, and $1.9 million in CY 2022.

9. Texas CHIP Perinatal Coverage provides prenatal care to certain low-income women who do not otherwise qualify for Medicaid. There is no way to definitively report the number of undocumented immigrants served by CHIP Perinatal Coverage because the program does not require citizenship documentation. As mentioned in paragraph 6, HHSC revised the methodology to include a lower and upper bound for the estimated number of undocumented immigrants served by CHIP Perinate. Attached as Exhibit 1 is a document that explains the methodology HHSC utilized to obtain the lower bound for estimates provided in this declaration. It is the same methodology previously relied upon by HHSC for preparing internal estimates and for preparation of Rider 59 Reports. The upper bound estimate for the cost of benefits provided to undocumented immigrants is based on the percentage of CHIP Perinate clients with 'UN' alien status among individuals that did not have a null/blank value for their Alien Type Code in TIERS. The total estimated cost to the State for CHIP Perinatal Coverage to undocumented immigrants residing in Texas

was between $7.6 million and $11.1 million in CY 2019; between $11 million and $16.9 million in CY2020; between $17 million and $25.8 million in CY 2021; and between $19.7 million and $30.9 million in CY2022. Attached as Exhibit 2 is a report providing detailed information and data sources for these calculations.

10. In the 2008 and 2010 versions of the Rider 59 Report, HHSC also provided estimates of the amount of uncompensated medical care provided by state public hospital district facilities to undocumented immigrants. In these reports, HHSC estimated that the State's public hospital district facilities incurred approximately $596.8 million in uncompensated care for undocumented immigrants in SFY 2006 and $716.8 million in SFY 2008. HHSC has not provided any estimates of uncompensated care for undocumented immigrants in more recent versions of the Rider 59 Report.

11. For Emergency Medicaid and CHIP Perinate, the total estimated cost to the State each year is affected by both the volume and cost of services provided and annual changes in the percentage of expenditures matched by the federal government (i.e., Federal Medical Assistance Percentage (FMAP) and Enhanced Federal Medical Assistance Percentage (E-FMAP)), which determines the state share of overall Medicaid and CHIP expenditures. Although all of these numbers are estimated costs for the respective programs, it is a certainty that each of these programs has some positive cost to the State of Texas due to utilization by undocumented immigrants.

12. All of the facts and information contained within this declaration are within my personal knowledge and are true and correct.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on this 18th day of January 2023.

SUSAN BRICKER

EXHIBIT B

Declaration of Susan Bricker

Exhibit 1

Appendix B: Estimating the Percent of Undocumented Clients

Appendix B: Estimating the Percent of Undocumented Clients

Previous Undocumented Immigrant Estimates

Previously, HHSC relied on different methods to estimate the percent of non-U.S. citizens in Texas who are undocumented. The first method consisted of assuming that one-half of the estimated non-U.S. citizen population in the state was undocumented. Under this method, HHSC would obtain the estimate for total number of non-U.S. citizens in the state, as reported from the U.S. Census Bureau's American Community Survey (ACS)[1], and would divide that number by two in order to obtain an estimate of the undocumented population in the state.

More recently HHSC relied on a method that uses two different sources of official federal government data to develop its own in-house estimates of the percent of Texas residents that are undocumented immigrants:

- The Texas-specific sample of the U.S. Census Bureau's American Community Survey (ACS), and
- The Office of Immigration Statistics of the U.S. Department of Homeland Security (DHS).

The ACS was the source for estimates of the total non-U.S. citizen population in the state while DHS was the source for the estimated number of persons in the state who are undocumented.

Using these two sources, HHSC estimated the percent of non-U.S. citizens who are undocumented by taking DHS' estimate of the number of undocumented immigrants in Texas (the numerator) and dividing it by the ACS estimate for the number of non-U.S. citizens in the state (the denominator). This calculation resulted in HHSC's estimate of the proportion/percent of non-U.S. citizens in the state who are undocumented.

[1] The ACS is a large-scale demographic survey that provides annual estimates of the total population in Texas according to U.S. citizen status (citizen versus non-citizen). However, the estimate for the non-U.S. citizen population is not broken down any further according to documented/undocumented status because that type of information is not collected by the survey.

According to this method, during 2008-2014, an estimated two-thirds (62 to 66%) of non-citizens were considered undocumented on any given year within that period.

DHS temporarily suspended the publication of its estimates for the unauthorized/undocumented population after March 2013, when it published estimates for this population as of January 2012. It resumed publication of the estimates on April 19, 2021, when it released previously unpublished estimates for the years 2013-2018. The new updates may be used to develop future versions of this report.

With the temporary suspension of DHS's estimates after March 2013, HHSC lost the official information source relied upon for data on the number of non-citizens who are undocumented, as none of the other Federal and Texas state agencies collected and published information about the legal status of non-U.S. citizens' residing in the state of Texas.

This situation resulted in the need to develop and alternative method for estimating the number and percent of non-U.S. citizens using HHSC services who are undocumented. The goal was to develop a method that does not rely on the simple assumptions previously used (that one-half of non-citizens are undocumented). The alternative method is explained below.

Method for Current Estimates

Benchmark Program: Texas' Medicaid Type Program 30

Texas' Medicaid Type Program 30 (TP 30) plays an important role in paying for emergency medical services provided to non-U.S. citizens who do not meet the eligibility criteria for Medicaid. Given the high-profile role the program plays in compensating health care providers for services provided to non-eligible non-citizens, it was chosen as the benchmark program for developing an estimate of the percent of non-citizens provided HHSC services who are undocumented.

To a very significant degree, uninsured non-citizen reproductive-age (ages 15-44) females are the main caseload driver within TP 30. In SFY 2017, reproductive- age females accounted for 81% of the clients served. Given the highly disproportionate impact this group has on the program, it is by far the most important one to analyze to obtain the best and most accurate estimate possible of the percent of clients served under this program that are likely to be undocumented non-citizens.

Data Analysis and Estimate

According to the U.S. Census Bureau's American Community Survey (ACS), in 2016 there were approximately 446,000 uninsured non-U.S. citizen reproductive-age females in Texas. Of those, 39 percent (176,000) had resided in the U.S. for 10 years or less and 61 percent (270,000) for more than 10 years.

It is reasonable to expect that the longer a non-citizen has resided in the U.S., the more likely he/she would have been able to attain some form of U.S. legal permanent resident status.

Assuming that the fraction of non-citizen reproductive-age females (ages 15-44) who have not attained some form of legal permanent resident status is 7 of every 10 (70%) among those who have lived in the U.S 10 years or less, and 4 of every 10 (40%) among those in the U.S. for more than 10 years, the estimated potential percentage for undocumented females of reproductive age in Texas is 52%.

Calculation for Estimated Percent Undocumented

((0.7*176,000 + 0.4*270,000) / (446,000)) * 100 = 51.8% ~ 52%

Extending these assumptions derived from the ACS data to non-citizen reproductive-age females that received assistance under TP 30 – for whom year of entry into the U.S. information is not known -- it is then estimated that 52% of them are likely to be undocumented.

Taking into consideration that uninsured, non-citizen reproductive-age females represent a highly disproportionate share of the program's caseload, the estimated potential percentage for undocumented clients applicable to them, slightly adjusted downwards to 50%, is also applied to the entire TP 30 program. Due to the lack of sufficient demographic data on populations at-risk for other programs of interest, the same percentage was also applied to the Family Violence and CHIP-P programs for the purposes of the analysis in this report.

Declaration of Susan Bricker

Exhibit 2

Health and Human Services Commission Services and Benefits Provided to Undocumented Immigrants

EXHIBIT B

Health and Human Services Commission Services and Benefits Provided to Undocumented Immigrants

	CY 2019	CY 2020	CY 2021	CY 2022
(1) Texas Emergency Medicaid				
Lower Estimate	$78,000,000	$58,500,000	$61,300,000	$44,900,000*
Upper Estimate	$116,000,000	$88,300,000	$95,600,000	$72,200,000*
(2) Texas Family Violence Program (FVP)	$1,100,000	$1,400,000	$1,600,000	$1,900,000
(3) Texas Children's Health Insurance Program (CHIP) Perinatal Coverage				
Lower Estimate	$7,600,000	$11,000,000	$17,000,000	$19,700,000
Upper Estimate	$11,100,000	$16,900,000	$25,800,000	$30,900,000
TOTAL TEXAS HEALTH AND HUMAN SERVICES COMMISSION				
Lower Estimate	**$86,700,000**	**$70,900,000**	**$79,900,000**	**$66,500,000**
Upper Estimate	**$128,200,000**	**$106,600,000**	**$123,000,000**	**$105,000,000**

Notes:

*Administrative claims and MCO encounter data were downloaded on January 11, 2023. Claims and encounter data are subject to an 8-month time lag for claims adjudication. Therefore, expenditures shown for client services in CY 2022 do not reflect complete expenditure data for the year.

EXHIBIT B

Texas Emergency Medicaid Expenditures, Type Program 30, Calendar Years 2019 - 2022

Client Service[1]	CY 2019	CY 2020	CY 2021	CY 2022*
Inpatient hospital	$330,920,650	$317,411,166	$340,355,399	$229,137,501
Outpatient hospital	$24,240,002	$20,021,218	$21,920,429	$16,423,357
Professional and other services	$23,975,315	$20,204,430	$17,634,540	$12,325,562
Vendor drug	$272,418	$115,664	$54,879	$26,752
Total	**$379,408,384**	**$357,752,477**	**$379,965,247**	**$257,913,172**

Texas' Share of TP 30 Expenditures	CY 2019	CY 2020	CY 2021	CY 2022*
Texas' Share based on Federal Medical Assistance Percentage (FMAP)[2]	41.14%	32.68%	32.24%	34.78%
Texas' Share of TP 30 Expenditures *(row 7 x row 10)*	$156,088,609	$116,913,510	$122,500,796	$89,702,201

Estimated Percentage of TP30 Services Provided to Undocumented Immigrants	CY 2019	CY 2020	CY 2021	CY 2022*
Census estimate[3]	50%	50%	50%	50%
TIERS estimate[4]	74.3%	75.5%	78.0%	80.5%

Estimated Cost of Services Provided to Undocumented Immigrants	CY 2019	CY 2020	CY 2021	CY 2022*
Lower Bound *(row 11 x row 14)*	**$78,044,305**	**$58,456,755**	**$61,250,398**	**$44,851,101**
Upper Bound *(row 11 x row 15)*	**$115,973,837**	**$88,269,700**	**$95,550,621**	**$72,210,272**

Data Sources:

[1] TMHP, AHQP Medicaid Claims

[2] FFY 2019 rates are final as stated in Federal Register Vol. 82, No. 223, November 21, 2017.
FFY 2020 rates are final as stated in Federal Register Vol. 83, No. 229, November 28, 2018.
FFY 2021 rates are final as stated in Federal Register Vol. 84, No. 232, December 3, 2019.
FFY 2022 rates are final as stated in Federal Register Vol. 85, No. 230, November 30, 2020.

[3] U.S. Census, 2020 American Community Survey, Texas-specific sample

[4] Texas Integrated Eligibility Redesign System (TIERS)

Notes:

Because HHSC Medicaid claims data do not conclusively identify the legal residency status of immigrants, the portion of Emergency Medicaid payments attributable to undocumented immigrants mus be estimated. Two estimates have been provided to approximate upper and lower bounds of costs provided to undocumented immigrants:

Lower bound: According to the U.S. Census Bureau's American Community Survey (ACS) for Texas, approximately 2,743,000 non-citizens resided in Texas in 2020. HHSC's Office of Data, Analytics, and Performance (DAP) estimates that no less than 50% of these residents, or no less than 1,372,000 were undocumented.

Upper bound: based on enrollment the percentage of Emergency Medicaid clients with 'UN' alien status, among individuals that did not have a null/blank value for their Alien Type Code in T ERS

*Administrative claims and MCO encounter data were downloaded on January 11, 2023. Claims and encounter data are subject to an 8-month time lag for claims adjudication. Therefore, expenditures shown for client services in CY 2022 do not reflect complete expenditure data for the year.

EXHIBIT B

Texas Family Violence Program Expenditures, Calendar Years 2019 - 2022

FVP Date of Service	Expenditures*	Percent of Texas Residents who were undocumented	Estimated Costs for Direct FVP Services to Undocumented Immigrants**
1/1/2019 – 12/31/2019	$23,700,539	4.7%	$1,113,925
1/1/2020 – 12/31/2020	$30,590,825	4.7%	$1,437,769
1/1/2021 – 12/31/2021	$33,213,070	4.7%	$1,561,014
1/1/2022 – 12/31/2022	$40,463,500	4.7%	$1,901,784

Data Source: CAPPS Financials, 1/12/2023

Notes:

* Represents all funds for the Family Violence Program (appropriated and supplemental).

** The FVP does not screen family violence clients for residency status data. Therefore, the portion of FVP expenditures attributable to undocumented immigrants must be estimated. According to the U.S. Census Bureau's American Community Survey (ACS) for Texas, approximately 29,354,000 individuals resided in Texas in 2020. HHSC's Office of Data, Analytics, and Performance (DAP) estimates that in 2020 no less than 1,372,000 or 4.7 percent of these residents were undocumented.

EXHIBIT B

Texas Children's Health Insurance Program (CHIP) Perinatal Coverage Expenditures, Calendar Years 2019 - 2022

	CY 2019	CY 2020	CY 2021	CY 2022
Texas CHIP Perinatal Coverage expenditures[1]	$175,103,677	$154,717,301	$150,341,871	$161,628,934

Texas' Share of CHIP Expenditures	CY 2019	CY 2020	CY 2021	CY 2022
Texas' Share based on Enhanced Federal Medical Assistance Percentage (EFMAP)[2]	8.67%	14.25%	22.57%	24.35%
Texas' Share of CHIP-Perinate Expenditures (row 3 x row 6)	$15,181,489	$22,047,215	$33,932,160	$39,356,645

Estimated Percentage of CHIP-Pernate Services Provided to Undocumented Immigrants	CY 2019	CY 2020	CY 2021	CY 2022
Census estimate[3]	50%	50%	50%	50%
TIERS estimate[4]	73.3%	76 6%	76.1%	78.4%

Estimated Cost of Services Provided to Undocumented Immigrants	CY 2019	CY 2020	CY 2021	CY 2022
Total (row 7 x row 10)	**$7,590,744**	**$11,023,608**	**$16,966,080**	**$19,678,323**
Total (row 7 x row 11)	**$11,128,031**	**$16,888,167**	**$25,822,374**	**$30,855,610**

Data Sources:

[1] HHSC, DAP SQL Server, CHIP_hx ile

[2] FFY 2019 rates are final as stated in Federal Register Vol. 82, No. 223, November 21, 2017.
FFY 2020 rates are final as stated in Federal Register Vol. 83, No. 229, November 28, 2018.
FFY 2021 rates are final as stated in Federal Register Vol. 84, No. 232, December 3, 2019.
FFY 2022 rates are final as stated in Federal Register Vol. 85, No. 230, November 30, 2020.

[3] U.S. Census, 2020 American Community Survey, Texas-specific sample

[4] Texas Integrated Eligibility Redesign System (TIERS)

Notes:

Because HHSC Medicaid claims data do not conclusively identify the legal residency status of immigrants, the portion of Emergency Medicaid payments attributable to undocumented immigrants must be estimated. Two estimates have been provided to approximate upper and lower bounds of costs provided to undocumented immigrants:

Lower bound: According to the U.S. Census Bureau's American Community Survey (ACS) for Texas, approximately 2,743,000 non-citizens resided in Texas in 2020. HHSC's Office of Data, Analytics, and Performance (DAP) estimates that no less than 50% of these residents, or no less than 1,372,000 were undocumented.

Upper bound: based on the percentage of CHIP-Perinate clients with 'UN' alien status, among individuals that did not have a null/blank value for their Alien Type Code in TIERS

EXHIBIT B

TEXAS MEDICAID PERCENTAGE MATCH
As of March 2022

	State Fiscal Year (Sept - Aug)				Federal Fiscal Year (Oct - Sept)				Calendar Year (Jan - Dec)			
	State Share		Federal Share		State Share		Federal Share		State Share		Federal Share	
	FMAP	EFMAP	FMAP	EFMAP	FMAP	EFMAP	FMAP	EFMAP	FMAP	EFMAP	FMAP	EFMAP
2004	39.80%	27.86%	60.20%	72.14%	39.78%	27.85%	60.22%	72.15%	39.62%	27.74%	60.38%	72.26%
2005	39.18%	27.43%	60.82%	72.57%	39.13%	27.39%	60.87%	72.61%	39.18%	27.43%	60.82%	72.57%
2006	39.32%	27.53%	60.68%	72.47%	39.34%	27.54%	60.66%	72.46%	39.31%	27.52%	60.69%	72.48%
2007	39.23%	27.46%	60.77%	72.54%	39.22%	27.45%	60.78%	72.55%	39.28%	27.49%	60.72%	72.51%
2008	39.42%	27.60%	60.58%	72.40%	39.44%	27.61%	60.56%	72.39%	39.72%	27.81%	60.28%	72.19%
2009[1]	40.47%	28.32%	59.53%	71.68%	40.56%	28.39%	59.44%	71.61%	40.74%	28.52%	59.26%	71.48%
2010[1]	41.21%	28.85%	58.79%	71.15%	41.27%	28.89%	58.73%	71.11%	40.81%	28.57%	59.19%	71.43%
2011[1]	39.59%	27.72%	60.41%	72.28%	39.44%	27.61%	60.56%	72.39%	40.03%	28.02%	59.97%	71.98%
2012	41.58%	29.11%	58.42%	70.89%	41.78%	29.25%	58.22%	70.75%	41.51%	29.06%	58.49%	70.94%
2013	40.79%	28.55%	59.21%	71.45%	40.70%	28.49%	59.30%	71.51%	40.85%	28.60%	59.15%	71.40%
2014	41.26%	28.88%	58.74%	71.12%	41.31%	28.92%	58.69%	71.08%	41.47%	29.03%	58.53%	70.97%
2015	41.90%	29.32%	58.10%	70.68%	41.95%	29.36%	58.05%	70.64%	42.18%	29.52%	57.82%	70.48%
2016[2]	42.79%	29.96%	57.21%	70.04%	42.87%	30.01%	57.13%	69.99%	43.11%	30.18%	56.89%	69.82%
2017[2]	43.74%	30.61%	56.26%	69.39%	43.82%	30.67%	56.18%	69.33%	43.65%	30.55%	56.35%	69.45%
2018[2]	43.18%	30.22%	56.82%	69.78%	43.12%	30.18%	56.88%	69.82%	42.79%	29.95%	57.21%	70.05%
2019[2]	41.92%	29.35%	58.08%	70.65%	41.81%	29.27%	58.19%	70.73%	41.14%	28.80%	58.86%	71.20%
2020[2]	39.33%	27.54%	60.67%	72.46%	39.11%	27.38%	60.89%	72.62%	38.88%	27.22%	61.12%	72.78%
2020 Stimulus[2,3]	32.91%	23.04%	67.09%	76.96%	32.91%	23.04%	67.09%	76.96%	32.68%	22.88%	67.32%	77.12%
2020 Blended[2,3]	35.20%	24.64%	64.80%	75.36%	34.46%	24.12%	65.54%	75.88%	32.68%	22.88%	67.32%	77.12%
2021	38.27%	26.78%	61.73%	73.22%	38.19%	26.73%	61.81%	73.27%	38.44%	26.91%	61.56%	73.09%
2021 Stimulus[3]	32.07%	22.45%	67.93%	77.55%	31.99%	22.39%	68.01%	77.61%	32.24%	22.57%	67.76%	77.43%
2021 Blended[3]	32.07%	22.45%	67.93%	77.55%	31.99%	22.39%	68.01%	77.61%	32.24%	22.57%	67.76%	77.43%
2022	39.12%	27.38%	60.88%	72.62%	39.20%	27.44%	60.80%	72.56%	39.43%	27.60%	60.57%	72.40%
2022 Stimulus[3]	32.92%	23.04%	67.08%	76 96%	33.00%	23.10%	67.00%	76.90%	34.78%	24.35%	65.22%	75.65%
2022 Blended[3]	32.92%	23.04%	67.08%	76 96%	33.00%	23.10%	67.00%	76.90%	34.78%	24.35%	65.22%	75.65%
2023	40 05%	28.04%	59.95%	71 96%	40.13%	28 09%	59 87%	71.91%	40.15%	28.11%	59.85%	71 89%
2023 Stimulus[3]	33.85%	23.70%	66.15%	76 30%	33.93%	23.75%	66.07%	76.25%	35.50%	24.85%	64.50%	75.15%
2023 Blended[3]	37.99%	26.59%	62.01%	73.41%	38.58%	27.01%	61.42%	72.99%	38.99%	27.30%	61.01%	72.70%
2024	40.21%	28.14%	59.79%	71.86%	40.22%	28.15%	59.78%	71.85%	40.22%	28.15%	59.78%	71.85%
2025	40.22%	28.15%	59.78%	71.85%	40.22%	28.15%	59.78%	71.85%	40.22%	28.15%	59.78%	71.85%
2026	40.22%	28.15%	59.78%	71.85%	40.22%	28.15%	59.78%	71.85%	40.22%	28.15%	59.78%	71.85%
2027	40.22%	28.15%	59.78%	71.85%	40.22%	28.15%	59.78%	71.85%	40.22%	28.15%	59.78%	71.85%
2028	40.22%	28.15%	59.78%	71.85%	40.22%	28.15%	59.78%	71.85%	40.22%	28.15%	59.78%	71.85%

[1] Non-stimulus FMAPs are shown in columns C-P. For the period of October 2008-June 2011, stimulus FMAPs were in effect. See columns R-U for the stimulus match rates.

[2] Standard EFMAPs are shown in columns C-P. Per FFIS Budget Brief 18-03 (January 24, 2018), for the period of October 2015-September 2019, CHIP programs and expenditures funded with Title XXI will be eligible for a +23 percentage point enhancement; for October 2019-September 2020 for an +11.5 percentage point enhancement; and beginning October 2020 will receive no enhancement. See columns W-Z.

[3] Stimulus FMAP increase of 6.2% is assumed for the period January 2020 - December 2022. "2020 Stimulus" (row 24), "2021 Stimulus" (row 27), "2022 Stimulus" (row 30), and "2023 Stimulus" (row 33) FMAPs represent the stimulus period only. "2020 Blended" (row 25), "2021 Blended" (row 28), "2022 Blended" (row 31), and "2023 Blended" (row 34) FMAPs represent their respective full fiscal or calendar year.

FFY 2010 rates are final, as stated in Federal Register Vol. 73, No. 229, November 26, 2008.
FFY 2011 non-stimulus rates are final as stated in FFIS Issue Brief 09-38, October 21, 2009.
FFY 2012 rates are final as stated in Federal Register Vol. 75, No. 217, November 10, 2010.
FFY 2013 rates are final as stated in Federal Register Vol. 76, No. 230, November 30, 2011.
FFY 2014 rates are final as stated in Federal Register Vol. 77, No. 231, November 30, 2012.
FFY 2015 rates are final as stated in Federal Register Vol. 79, No. 13, January 21, 2014.
FFY 2016 rates are final as stated in Federal Register Vol. 79, No. 231, December 2, 2014.
FFY 2017 rates are final as stated in Federal Register Vol. 80, No. 227, November 25, 2015.
FFY 2018 rates are final as stated in Federal Register Vol. 81, No. 220, November 15, 2016.
FFY 2019 rates are final as stated in Federal Register Vol. 82, No. 223, November 21, 2017.
FFY 2020 rates are final as stated in Federal Register Vol. 83, No. 229, November 28, 2018.
FFY 2021 rates are final as stated in Federal Register Vol. 84, No. 232, December 3, 2019.
FFY 2022 rates are final as stated in Federal Register Vol. 85, No. 230, November 30, 2020.
FFY 2023 rates are final as stated in Federal Register Vol. 86, No. 225, November 26, 2021.

EXHIBIT B-11

TEXAS MEDICAID PERCENTAGE MATCH WITH STIMULUS/ENHANCEMENTS

	FMAP Only: Stimulus Rates				EFMAP Only: +23% Enhanced Match					
	State Share		Federal Share		State Share			Federal Share		
	SFY FMAP	FFY FMAP	SFY FMAP	FFY FMAP	SFY EFMAP	CY EFMAP	FFY EFMAP	SFY EFMAP	CY EFMAP	FFY EFMAP
2004										
2005										
2006										
2007										
2008										
2009[1]	31.74%	30.97%	68.26%	69.03%						
2010[1]	29.15%	29.06%	70.85%	70.94%						
2011[1]	32.68%	33.54%	67.33%	66.46%						
2012										
2013										
2014										
2015										
2016[2]					8.87%	7.18%	7.01%	91.13%	92.82%	92.99%
2017[2]					7.61%	7.55%	7.67%	92.39%	92.45%	92.33%
2018[2]					7.22%	6.95%	7.18%	92.78%	93.05%	92.82%
2019[2]					6.35%	**8.67%**	6.27%	93 65%	91.33%	93.73%
2020[2]					15.08%	18.59%	15 88%	84 92%	81.41%	84.12%
2020 Stimulus[2 3]					11.54%	14.25%	11 54%	88.46%	85.75%	88.46%
2020 Blended[2 3]					12.18%	**14.25%**	12 62%	87 82%	85.75%	87.38%
2021					25.83%	26.91%	26.73%	74.17%	73.09%	73.27%
2021 Stimulus[3]					21.49%	22.57%	22.39%	78.51%	77.43%	77.61%
2021 Blended[3]					21.49%	**22.57%**	22.39%	78.51%	77.43%	77.61%
2022					27.38%	27.60%	27.44%	72.62%	72.40%	72.56%
2022 Stimulus[3]					23.04%	24.35%	23.10%	76.96%	75.65%	76.90%
2022 Blended[3]					23.04%	**24.35%**	23.10%	76.96%	75.65%	76.90%
2023										
2023 Stimulus[3]										
2023 Blended[3]										
2024										
2025										
2026										
2027										
2028										

State Fiscal Year stimulus rates are based on 11 months stimulus rate in SFY 2009, 12 months in SFY 2010 and 10 months in SFY 2011.
Stimulus Assumptions are Tier I Oct 2008-June 2009 (68.76%), Tier II July 2009-Sept 2009 (69.85%), Tier III Oct 2009-Dec 2010 (70.94%). A phased-down 6-month extension from Jan-Jun 2011 is included for FY 11 as stated in FFIS IB 10-33 (August 17, 2010).

Expenditures in Medicaid and CHIP paid with Title XXI funds will be eligible for this match between Oct 1, 2015 - Sept 30, 2020.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

STATE OF TEXAS, ET AL.; *Plaintiffs,* *v.* UNITED STATES OF AMERICA, ET AL.; *Defendants,* *and* KARLA PEREZ, ET AL.; STATE OF NEW JERSEY, *Defendants-Intervenors.*	Case No. 1:18-cv-00068

DECLARATION OF JAMES TERRY

My name is James Terry, and I am over the age of 18 and fully competent in all respects to make this declaration. I have personal knowledge and expertise of the matters herein stated.

1. I am the Associate Commissioner for School Finance/Chief School Finance Officer at the Texas Education Agency ("TEA") with 30 years of experience at the school district level. I have worked for TEA in this capacity since December 1, 2022, having previously served as the Chief Financial Officer for Third Future Schools and the Chief Financial Officer at Dallas Independent School District from

EXHIBIT C

2013 to 2017. Previously I served as the Executive Director of Finance for the North East Independent School District from 1999 to 2011.

2. In my current position, I oversee TEA's school finance operations, including the administration of the Foundation School Program and analysis and processing of financial data. My responsibilities also include representing TEA in legislative hearings and school finance-related litigation.

3. TEA estimates that the average funding entitlement for fiscal year 2023 will be $9,564 per student in attendance for an entire school year. If a student qualified for the additional Bilingual and Compensatory Education weighted funding (for which most, if not all, UAC presumably would qualify), it would cost the State $11,781 to educate each student in attendance for the entire school year.

4. TEA has not received any information directly from the federal government regarding the precise number of unaccompanied children ("UAC") in Texas. However, I am aware that data from the U.S. Health and Human Services ("HHS") Office of Refugee Resettlement (accessed on January 5, 2023 at 11:35 a.m. CST at https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state) (attached as Exhibit 1), indicates that in Texas, 3,272 UAC were released to sponsors during the 12-month period covering October 2014 through September 2015; 6,550 UAC were released to sponsors during the 12-month period covering October 2015 through September 2016; 5,391 UAC were released to sponsors during the 12-month period covering October 2016 through September 2017; 4,136 UAC were released to sponsors during the 12-month period covering October 2017

through September 2018; 9,900 UAC were released to sponsors during the 12-month period covering October 2018 through September 2019; 2,336 UAC were released to sponsors during the 12-month period covering October 2019 through September 2020; 15,341 UAC were released during the 12-month period covering October 2020 through September 2021; and 19,071 UAC were released during the 12-month period covering October 2021 through September 2022. If each of these children is educated in the Texas public school system and qualifies for Bilingual and Compensatory Education weighted funding (such that the State's annual cost to educate each student for fiscal years 2016, 2017, 2018, 2019, 2020, 2021, 2022, and 2023 would be roughly $9,573, $9,639, $9,841, $10,330, $11,323, $11,536, $11,719, and $11,781, respectively), the annual costs to educate these groups of children for fiscal years 2016, 2017, 2018, 2019, 2020, 2021, 2022, and 2023 would be approximately $31.32 million, $63.13 million, $53.05 million, $42.73 million, $112.10 million, $26.95 million, $179.78 million, and $224.67 million, respectively.

5. School formula funding is comprised of state and local funds. The state funding is initially based on projections made by each school district at the end of the previous biennium. Districts often experience increases in their student enrollment from year to year, and the State plans for an increase of approximately 15,000 students in enrollment growth across Texas each year.

6. The Foundation School Program serves as the primary funding mechanism for providing state aid to public schools in Texas. Any additional UAC

enrolled in Texas public schools would increase the State's cost of the Foundation School Program over what would otherwise have been spent.

7. Based on my knowledge and expertise regarding school finance issues impacting the State of Texas, I anticipate that the total costs to the State of providing public education to UAC will rise in the future to the extent that the number of UAC enrolled in the State's public school system increases.

8. All of the facts and information contained within this declaration are within my personal knowledge and are true and correct.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9th day of January 2023.

JAMES TERRY

EXHIBIT C

Declaration of James Terry

Exhibit 1

Data from U.S. Health and Human Services office of Refugee Resettlement

EXHIBIT C

Unaccompanied Children Released to Sponsors by State

Listen

Current as of: December 12, 2022

When a child who is not accompanied by a parent or legal guardian is apprehended by immigration authorities, the child is transferred to the care and custody of the Office of Refugee Resettlement (ORR). Federal law requires that ORR feed, shelter, and provide medical care for unaccompanied children until it is able to release them to safe settings with sponsors (usually family members), while they await immigration proceedings. These sponsors live in many states.

Sponsors are adults who are suitable to provide for the child's physical and mental well-being and have not engaged in any activity that would indicate a potential risk to the child. All sponsors must pass a background check. The sponsor must agree to ensure the child's presence at all future immigration proceedings. They also must agree to ensure the minor reports to ICE for removal from the United States if an immigration judge issues a removal order or voluntary departure order.

HHS is engaging with state officials to address concerns they may have about the care or impact of unaccompanied children in their states, while making sure the children are treated humanely and consistent with the law as they go through immigration court proceedings that will determine whether they will be removed and repatriated, or qualify for some form of relief.

HHS has strong policies in place to ensure the privacy and safety of unaccompanied children by maintaining the confidentiality of their personal information. These children may have histories of abuse or may be seeking safety from threats of violence. They may have been trafficked or smuggled. HHS cannot release information about individual children that could compromise the child's location or identity.

The data in the table below shows **state-by-state** data of unaccompanied children released to sponsors as of October 31, 2022. ACF will update this data each month. **Additional data on unaccompanied children released to sponsors by state is available on the HHS website**.

View unaccompanied children released to sponsors by county.

Please note: ORR makes considerable effort to provide precise and timely data to the public, but adjustments occasionally occur following review and reconciliation. The FY2014 release data posted in the chart below were updated on March 13, 2015. The FY2015 release data were updated May 9, 2016. The FY2017 release data were updated May 22, 2018. The FY2018 release data were updated December 3, 2019. Questions may be addressed to ORR directly, at (202) 401-9246.

Unaccompanied Children Release Data

STATE	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY15 (OCT. 2014 — SEPT. 2015)	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY16 (OCT. 2015 — SEPT. 2016)	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY17 (OCT. 2016 — SEPT. 2017)*	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY18 (OCT. 2017 — SEPT. 2018)*	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY19 (OCT. 2018 — SEPT. 2019)	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY20 (OCT. 2019 — SEPT. 2020)	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY21 (OCT. 2020 — SEPT. 2021)*	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY22 (OCT. 2021 — SEPT. 2022)	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY22 (OCT. 2022 — OCT. 2022)
Alabama	808	870	598	736	1,111	247	1,946	2,378	167
Alaska	2	5	3	0	4	0	4	6	2
Arizona	167	330	322	258	493	162	631	782	67
Arkansas	186	309	272	193	359	87	790	926	85
California	3,629	7,381	6,268	4,675	8,447	2,225	10,773	13,730	987
Colorado	248	427	379	313	714	172	1,088	1,424	147
Connecticut	206	454	412	332	959	260	1,447	1,920	99
Delaware	152	275	178	222	383	107	519	573	49

STATE	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY15 (OCT. 2014 — SEPT. 2015)	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY16 (OCT. 2015 — SEPT. 2016)	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY17 (OCT. 2016 — SEPT. 2017)*	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY18 (OCT. 2017 — SEPT. 2018)*	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY19 (OCT. 2018 — SEPT. 2019)	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY20 (OCT. 2019 — SEPT. 2020)	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY21 (OCT. 2020 — SEPT. 2021)*	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY22 (OCT. 2021 — SEPT. 2022)	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY22 (OCT. 2022 — OCT. 2022)
DC	201	432	294	138	322	48	307	421	26
Florida	2,908	5,281	4,059	4,131	7,408	1,523	11,145	13,195	1,074
Georgia	1,041	1,735	1,350	1,261	2,558	559	4,358	5,233	406
Hawaii	2	4	4	1	16	6	23	22	17
Idaho	11	39	11	28	62	19	84	125	14
Illinois	312	519	462	475	863	211	1,712	2,930	278
Indiana	240	354	366	394	794	209	1,593	1,867	125
Iowa	201	352	277	238	489	119	677	820	66
Kansas	245	326	289	305	453	95	718	807	76
Kentucky	274	503	364	370	710	158	1,042	1,242	80
Louisiana	480	973	1,043	931	1,966	355	2,851	3,420	223
Maine	4	9	11	22	26	11	64	96	11
Maryland	1,794	3,871	2,957	1,723	4,671	825	5,471	6,062	478
Massachusetts	738	1,541	1,077	814	1,756	448	2,549	2,700	186
Michigan	132	227	160	136	248	74	451	673	54
Minnesota	243	318	320	294	624	151	1,002	1,071	95
Mississippi	207	300	237	299	482	108	707	745	56
Missouri	170	261	234	203	431	93	794	1,008	103
Montana	2	0	2	3	0	2	28	38	4
Nebraska	293	486	355	374	563	130	889	919	53
Nevada	137	283	229	132	324	79	465	616	59
New Hampshire	14	25	27	20	25	8	67	61	1
New Jersey	1,462	2,637	2,268	1,877	4,236	921	5,911	6,648	524
New Mexico	19	65	46	43	89	34	116	141	7
New York	2,630	4,985	3,938	2,845	6,367	1,663	8,534	8,543	674
North Carolina	844	1,493	1,290	1,110	2,522	610	4,249	4,888	380
North Dakota	2	10	3	2	10	1	14	19	1
Ohio	483	693	584	547	1,091	260	1,675	1,993	154
Oklahoma	225	301	267	286	581	120	906	1,067	70

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STATE	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY15 (OCT. 2014 — SEPT. 2015)	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY16 (OCT. 2015 — SEPT. 2016)	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY17 (OCT. 2016 — SEPT. 2017)*	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY18 (OCT. 2017 — SEPT. 2018)*	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY19 (OCT. 2018 — SEPT. 2019)	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY20 (OCT. 2019 — SEPT. 2020)	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY21 (OCT. 2020 — SEPT. 2021)*	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY22 (OCT. 2021 — SEPT. 2022)	TOTAL NUMBER OF UC RELEASED TO SPONSORS IN FY22 (OCT. 2022 — OCT. 2022)
Pennsylvania	333	604	501	563	1,229	271	2,103	2,518	182
PR	0	0	0	1	3	3	0	3	0
Rhode Island	185	269	234	235	453	92	520	609	40
South Carolina	294	562	483	508	1,012	255	1,743	2,251	193
South Dakota	61	81	81	96	149	44	233	272	13
Tennessee	765	1,354	1,066	1,173	2,191	510	4,267	4,821	311
Texas	3,272	6,550	5,391	4,136	9,900	2,336	15,341	19,071	1,433
Utah	62	126	99	97	179	75	307	491	51
Vermont	1	1	0	2	6	1	8	4	1
Virginia	1,694	3,728	2,888	1,650	4,215	770	5,400	6,213	450
Washington	283	476	494	435	723	237	1,113	1,301	90
West Virginia	12	26	23	23	41	4	60	89	6
Wisconsin	38	85	94	98	246	62	531	721	51
Wyoming	6	23	14	15	15	6	22	34	3
Virgin Islands	0	0	3	0	0	0	0	1	0
TOTAL	**27,840**	**52,147**	**42,497**	**34,953**	**72,837**	**16,837**	**107,686**	**127,447**	**9,783**

*The FY2015 numbers have been reconciled.

*The FY2017 numbers have been reconciled.

*The FY2018 numbers have been reconciled.

*The FY2021 numbers have been reconciled.

For more information, please read **ORR's reunification policy**.

Topics:
Unaccompanied Children (UC)

Types:
Grants & Funding

Audiences:
Unaccompanied Children (UC)

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EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

STATE OF TEXAS, STATE OF LOUISIANA Plaintiffs, v. UNITED STATES OF AMERICA, *et al.* Defendants.	)	No. 6:21-cv-00016

DECLARATION OF REBECCA WALTZ

My name is Rebecca Waltz, and I am over the age of 18 and fully competent in all respects to make this declaration. I have personal knowledge and expertise of the matters herein stated.

1. I am the Budget Director for the Texas Department of Criminal Justice. The Texas Department of Criminal Justice (TDCJ) is the state agency responsible for the care, custody, and rehabilitation of persons convicted of a criminal offense in the state of Texas.

2. I have been employed with TDCJ since June 2004, and I have served in my current position since January 2020. Prior to that, I served as TDCJ's Deputy Budget Director from December 2017 to December 2019, a Senior Budget Analyst from October 2007 to November 2017, and a Junior Budget Analyst from September 2004 to September 2007.

3. The Bureau of Justice Assistance (BJA) administers the State Criminal Alien Assistance Program (SCAAP) in conjunction with the U.S. Immigration and Customs Enforcement (ICE), Department of Homeland Security (OHS). SCAAP provides federal payments to states and localities that incurred correctional officer salary costs for incarcerating undocumented criminal aliens with at least one felony or two misdemeanor convictions for

EXHIBIT D

violations of state or local law, and incarcerated for at least 4 consecutive days during the reporting period.

4. As a part of my employment with TDCJ, I am responsible for compiling the data to be included in TDCJ's application for federal reimbursement to the State Criminal Alien Assistance Program. These data sets include the number of correctional officers and their salary expenditures (correctional officer is defined as a person whose primary employment responsibility is to maintain custody of individuals held in custody in a correctional facility) for the reporting period, information regarding maximum bed counts and inmate days, and information about the eligible inmates - (1) whom the agency incarcerated for at least four consecutive days during the reporting period; and (2) who the agency knows were undocumented criminal aliens, or reasonably and in good faith believes were undocumented criminal aliens.

5. TDCJ has sought reimbursement from the federal government through SCAAP since 1998.

6. For the most recently completed SCAAP application (reporting period of July 1, 2018, through June 30, 2019), TDCJ reported data for 8,893 eligible inmates and a total of 2,385,559 days. An estimate of the cost of incarceration for these inmates can be calculated by multiplying the systemwide cost per day per inmate for Fiscal Year 2020 ($69.27) as reported by the Texas Legislative Budget Board by the number of days. For example ($69.27 x 2,385,559 days = $165,247,672).

7. SCAAP awards have not been distributed yet for this application period.

8. It is my belief that to the extent the number of aliens in TDCJ custody increases, TDCJ's unreimbursed expenses will increase as well.

9. TDCJ incurs costs of housing, supervising, and providing health care to individuals whose detainers are canceled by federal immigration authorities. When those individuals are on parole or mandatory supervision, TDCJ incurs costs. Keeping detainees in TDCJ custody, or adding them to parole or mandatory supervision, who could have otherwise been detained and/or removed by federal immigration authorities, imposes greater burdens on the system. An estimate of the cost of parole or mandatory supervision for these inmates can be calculated by multiplying the average cost per inmate for active parole supervision for Fiscal Year 2020 ($4.64) as reported by the Texas Legislative Budget Board by the number of days. For example ($4.64 x 2,385,559 days = $11,068,994).

10. All of the facts and information contained within this declaration are within my personal knowledge and are true and correct.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 6th day of January 2022.

REBECCA WALTZ

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

STATE OF TEXAS, ET AL.;	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Case No. 1:18-cv-00068
	§	
UNITED STATES OF AMERICA, ET AL.;	§	
	§	
Defendants,	§	
	§	
and	§	
	§	
KARLA PEREZ, ET AL.;	§	
	§	
STATE OF NEW JERSEY,	§	
	§	
Defendants-Intervenors.	§	

DECLARATION OF SHERI GIPSON

My name is Sheri Gipson, and I am over the age of 18 and fully competent in all respects to make this declaration. I have personal knowledge and expertise of the matters herein stated.

1. I am the Chief of the Texas Department of Public Safety ("DPS") Driver License Division. In this capacity, I oversee DPS's issuance of driver licenses and identification cards to residents of the State of Texas.

2. I was appointed to my current position and confirmed by the Texas Public Safety Commission in February 2020. Prior to that, I served as Assistant Chief of the Driver License Division from March 2016 through February 2020. I have worked for the Driver License Division of DPS for 40 years.

3. Pursuant to Section 521.142(a) of the Texas Transportation Code, an individual applying for an original driver license "who is not a citizen of the United States must present to

[DPS] documentation issued by the appropriate United States agency that authorizes the applicant to be in the United States before the applicant may be issued a driver's license." Section 521.1425(d) of the Texas Transportation Code provides that DPS "may not deny a driver's license to an applicant who provides documentation described by Section 521.142(a) based on the duration of the person's authorized stay in the United States, as indicated by the documentation presented under Section 521.142(a)."

4. Pursuant to Section 521.101(f-2) of the Texas Transportation Code, an individual applying for an original personal identification certificate "who is not a citizen of the United States must present to [DPS] documentation issued by the appropriate United States agency that authorizes the applicant to be in the United States." Section 521.101(f-4) of the Texas Transportation Code provides that DPS "may not deny a personal identification certificate to an application who complies with Subsection (f-2) based on the duration of the person's authorized stay in the United States, as indicated by the documentation presented under Subsection (f-2)."

5. If an individual presents documentation issued by the federal government showing authorization to be in the United States (such as an Employment Authorization Document or grant of deferred action), and otherwise meets eligibility requirements, DPS will issue a limited term driver license or personal identification certificate to a non-citizen resident of Texas.[1] A license or identification certificate issued to such an applicant is limited to the term of the applicant's lawful presence, which is set by the federal government when it authorizes that individual's presence. In fiscal year 2023 (September 2022 through February 2023), DPS issued 224,554 limited term licenses and identification certificates. In fiscal year 2022 (September 2021

[1] DPS maintains a list of documents acceptable for verifying lawful presence. *See* Tex. Dep't of Public Safety, Verifying Lawful Presence 4 (Rev. 7-13) (also attached to as Ex. A), https://www.dps.texas.gov/sites/default/files/documents/driverlicense/documents/verifyinglawfulpresence.pdf.

through August 2022), DPS issued 414,567 limited term licenses and identification certificates.

6. For each non-citizen resident of Texas who seeks a limited term driver license or personal identification certificate, DPS verifies the individual's lawful presence status with the United States government using the Systematic Alien Verification of Entitlements ("SAVE") system. The State of Texas currently pays $0.30 per customer for SAVE verification purposes. Approximately 18% of customers must complete additional SAVE verification at $0.50 per transaction.

7. For each non-United States citizen resident of Texas who seeks a limited term driver license, DPS verifies the individual's social security number and that person's eligibility through Social Security Online Verification ("SSOLV") and the American Association of Motor Vehicle Administrators' ("AAMVA") Problem Drivers Pointer System ("PDPS") and, if applicable, the Commercial Driver License Information System ("CDLIS"). The State of Texas currently pays $0.05 per customer for SSOLV and PDPS verification purposes. There is a cost of $0.028 for CDLIS verification purposes, which is about 2% of all limited term licenses.

8. Each additional customer seeking a limited term driver license or personal identification certificate imposes a cost on DPS. DPS estimates that for an additional 10,000 driver license customers seeking a limited term license, DPS would incur a biennial cost of approximately $2,014,870.80. The table below outlines the estimated costs that DPS would incur based on the additional number of customers per year for employee hiring and training, office space, office equipment, verification services, and card production cost. For every 10,000 additional customers above the 10,000-customer threshold, DPS may have to open additional driver license offices or expand current facilities to meet that increase in customer demand.

Customer Volume Scenario	Additional Employees Required	Additional Office Space Required (SqFt) (96 per employee)	Biennial Cost for Additional Employees, Leases, Facilities and Technology	Biennial Cost for Verification Services	Biennial Cost for Card Production	Total Cost to DPS
10,000	9.4	902.4	$1,978,859.60	$9,011.20	$27,000.00	$2,014,870.80
20,000	18.8	1,804.8	$3,957,719.20	$18,022.40	$54,000.00	$4,029,741.60
30,000	28.2	2,707.2	$5,936,578.80	$27,033.60	$81,000.00	$6,044,612.40
40,000	37.6	3,609.6	$7,915,438.40	$36,044.80	$108,000.00	$8,059,483.20
50,000	46.9	4,502.4	$9,894,298.00	$45,056.00	$135,000.00	$10,074,354.00
100,000	93.9	9,014.4	$19,788,596.01	$90,112.00	$270,000.00	$20,148,708.01
150,000	140.8	13,516.8	$29,682,894.01	$135,168.00	$405,000.00	$30,223,062.01
200,000	187.8	18,028.8	$39,577,192.01	$180,224.00	$540,000.00	$40,297,416.01

9. Standard term licenses issued to most citizens are valid for a period of eight years with an allowance to renew online once after an office visit. Therefore, most license holders only have to visit a driver license office once every sixteen years. Because limited term licenses are limited to the term of the applicant's lawful presence, it is possible that an individual would have to renew their limited term license sixteen or more times during the same sixteen-year span. The frequency of renewing the license would depend on the length of time the appropriate United States agency authorizes the applicant to be in the United States. Every renewal for a limited term license requires an additional in-person visit to a DPS facility, and thus requires additional costs related to employee hiring and training, verification of lawful presence status through the SAVE system, office space, office equipment, and infrastructure. Thus, the estimated costs identified above that DPS would incur would only increase as more limited term licenses are issued.

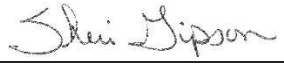
10. The added customer base that may be created by an increase in the number of individuals authorized to be in the United States who chose to reside in Texas will substantially burden driver license resources without additional funding and support.

11. All of the facts and information contained within this declaration are within my personal knowledge and are true and correct.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true

and correct.

Executed on this 20th day of March, 2023.



SHERI GIPSON

Declaration of Sheri Gipson
Exhibit A:
Verifying Lawful Presence

Verifying Lawful Presence

An applicant for a driver license (DL) or identification card (ID) must present proof of lawful presence in the US. The table on the following pages describes the acceptable documents for each type of applicant attempting to verify lawful presence. All documentation must show the applicant's name and date of birth. The applicant must validate a name change or other inconsistent information through additional documentation such as a marriage license, divorce decree or court order.

The department must verify applicable lawful presence documentation through the US Department of Homeland Security's (DHS) Systematic Alien Verification for Entitlements (SAVE) Program. Verification through SAVE is often instantaneous, but when it is not, receipt of the DL/ID may be delayed for up to 30 days. If SAVE cannot verify on the first attempt, SAVE will permit two additional stages of verification. Each stage may require additional documentation from the applicant. After each stage, the applicant will receive instructions either verbally or by mail on how to proceed with the transaction. To avoid further delay, the applicant should comply with the instructions fully and as soon as possible. If the applicant provides timely responses, the process timeline generally occurs as follows.

Stage	DLD receives response from DHS	DLD response to applicant
First	Within a few seconds	If verified, card issued
Second	3 to 5 business days	Instruction letter issued within 48 hours after DHS response received by DLD
Third	Up to 20 additional business days after second response received from DHS	Instruction letter issued within 48 hours after DHS response received by DLD

Temporary Visitor/Limited Term Issuance

An applicant may be issued a limited term DL/ID if he or she is NOT:

- A US citizen;
- A US national;
- A lawful permanent resident;
- A refugee; or
- An asylee.

A limited term DL/ID will expire with the applicant's lawful presence as determined by DHS.

Commercial Driver Licenses

This guide does not apply to commercial driver licenses. A person who is a US citizen, US national, lawful permanent resident, refugee or asylee may apply for a commercial driver license. All others may apply for a nonresident commercial driver license, if eligible. Refer to http://www.dps.texas.gov/DriverLicense/CommercialLicense.htm or Chapter 522 of the Transportation Code for application and eligibility requirements.

Category	Acceptable Documents
U.S. Citizen	❖ Birth certificate issued by the appropriate vital statistics agency of a U.S. State, a U.S. territory, or the District of Columbia indicating birth in U.S. ❖ Department of State Certification of Birth issued to U.S. Citizens born abroad (FS-240, DS-1350, or FS-545) or Consular Report of Birth Abroad ❖ Certificate of U.S. Citizenship ❖ Certificate of Naturalization ❖ U.S. Dept. of Justice – INS U.S. Citizenship Identification Card (I-197 or I-179) ❖ Northern Mariana Card (I-873) ❖ U.S. passport book that **does not** indicate on the last page that "THE BEARER IS A UNITED STATES NATIONAL AND NOT A UNITED STATES CITIZEN" ❖ U.S. passport card
U.S. National	U.S. passport book that indicates on the last page that "THE BEARER IS A UNITED STATES NATIONAL AND NOT A UNITED STATES CITIZEN"
Kickapoo Traditional Tribe of Texas ("KIC") (U.S. citizen)	American Indian Card (form I-872) which indicates "KIC"
Kickapoo Traditional Tribe of Texas ("KIP") (non-U.S. citizen)	American Indian Card (form I-872) which indicates "KIP"
American Indian born in Canada (First Nations)	An applicant may refer to the Jay Treaty, 8 U.S.C. § 1359, or 8 C.F.R. § 289.2 and may present a variety of documents. Issuance cannot occur without approval of the documents by Austin headquarters. DLD Personnel: make copies of documentation and seek approval through the chain of command.
Lawful Permanent Resident	❖ Permanent Resident Card (I-551) ❖ Resident Alien Card (I-551) – card issued without expiration date ❖ Valid Immigrant Visa (with adit stamp) and unexpired foreign passport ❖ Unexpired foreign passport stamped with temporary I-551 language (adit stamp), "Approved I-551," or "Processed for I-551" ❖ I-94 stamped with temporary I-551 language (adit stamp), "Approved I-551," or "Processed for I-551" ❖ Re-entry Permit I-327 Note: I-151, the predecessor to I-551, is not acceptable as proof of permanent resident status.
Immigrant Visa with Temporary I-551 language	A valid Immigrant Visa within one year of endorsement (i.e. stamped by Customs and Border Protection – adit stamp) and an unexpired passport
Conditional entrants	Immigration documentation with an alien number or I-94 number indicating this status, which can include but is not limited to: ❖ I-94 or other document showing admission under Section 203(a)(7), "refugee conditional entry" ❖ I-688B coded 274a.12(a)(3) ❖ I-766 with category A3 or A03

Category	Acceptable Documents
Asylee	Immigration documentation with an alien number or I-94 number indicating this status, which can include but is not limited to: ❖ I-94 with annotation "Section 208" or "asylee" ❖ Unexpired foreign passport with annotation "Section 208" or "asylee" ❖ I-571 Refugee Travel Document ❖ I-688B coded 274a.12(a)(5) ❖ I-766 with category A5 or A05
Refugee	Immigration documentation with an alien number or I-94 number indicating this status, which can include but is not limited to: ❖ I-94 with annotation "Section 207" or "refugee" ❖ Unexpired foreign passport with annotation "Section 207" or "refugee" ❖ I-571 Refugee Travel Document ❖ I-688B coded 274a.12(a)(3) ❖ I-766 with category A3 or A03
Temporary Protected Status (TPS)	Immigration documentation with an alien number or I-94 number indicating this status or Employment Authorization Document (EAD) (I-766) with category A12 or C19
Applicant with Employment Authorization Document	Employment Authorization Document (EAD)(I-766)
Applicants for adjustment of status Note: These are individuals applying to become lawful permanent residents.	Immigration documentation with an alien number or I-94 number This can include but is not limited to a form I-797 indicating pending I-485 or pending application for adjustment of status.
Applicants for extension of status, change of status, petition for non-immigrant worker, with a pending I-918 application, or other pending category.	Immigration documentation with an alien number or I-94 number This can include but is not limited to a form I-797 indicating a pending application for an extension of status, change of status, petition for non-immigrant worker, or other pending category.
Citizens of the Republic of Palau	Unexpired foreign passport or I -94 with annotation "CFA/PAL" or other annotation indicating the Compact of Free Association/Palau **OR** Employment Authorization Document (EAD)(I-766) with category A8 or A08
Citizens of the Republic of the Marshall Islands	Unexpired foreign passport or I -94 with annotation "CFA/RMI" or other annotation indicating the Compact of Free Association/Republic of Marshall Islands **OR** Employment Authorization Document (EAD)(I-766) with category A8 or A08

Category	Acceptable Documents
Citizens of the Federated States of Micronesia	Unexpired foreign passport or I -94 with annotation "CFA/FSM" or other annotation indicating the Compact of Free Association/Federated States of Micronesia **OR** Employment Authorization Document (EAD)(I-766) with category A8 or A08
Cuban/Haitian entrants	Immigration documentation with an alien number or I-94 number This can include but is not limited to an I-94 with annotation "Cuban/Haitian entrant"
Lawful temporary residents	Immigration documentation with an alien number or I-94 number
Self-petitioning abused spouses or children, parents of abused children, or children of abused spouses (Applicants with Violence Against Women Act (**VAWA**) petitions)	Immigration documentation with an alien number or I-94 number This can include but is not limited to I-797 indicating approved, pending, or prima facie determination of I-360 or an approved or pending I-360 or an I-766 with category C31.
Parolees	Immigration documentation with an alien number or I-94 number This can include but is not limited to an I-94 with annotation "parole" or "paroled pursuant to Section 212(d)(5)."
Person granted **deferred action**	Immigration documentation with an alien number or I-94 number
Persons granted **deferred enforcement departure** (DED)	Immigration documentation with an alien number or I-94 number or Employment Authorization Document (EAD) (I-766) with category A11 Note: Individuals in this status may have been granted an extension to the period of authorized stay that is not reflected on the current EAD. Notifications regarding any extensions to this category will be distributed by Austin headquarters.
Person granted **family unity**	Immigration documentation with an alien number or I-94 number
Persons under an **order of supervision**	Immigration documentation with an alien number or I-94 number
Persons granted **extended or voluntary departure**	Immigration documentation with an alien number or I-94 number

Category	Acceptable Documents
Persons granted **withholding of deportation or removal**	Immigration documentation with an alien number or I-94 number This can include but is not limited to an I-94 or passport with annotation "Section 243(h)" or a letter or order from USCIS or court granting withholding of deportation or removal.
Persons in **removal or deportation proceedings**	Immigration documentation with an alien number or I-94 number
Persons granted a **stay of deportation**	Immigration documentation with an alien number or I-94 number
Persons granted **voluntary departure**	Immigration documentation with an alien number or I-94 number
A-1, A-2, and A-3	Unexpired foreign passport or I -94 **Note:** Issuance **cannot occur unless** applicant presents a letter from U.S. Department of State with original signature indicating ineligibility for Department of State issued driver license or requesting issuance of a state issued identification card.
B1/B2 Visa/BCC with I-94 (Border Crosser Card , DSP-150, or "laser visa")	All of the following: ♦ Unexpired foreign passport, ♦ Visa (border crosser card), **and** ♦ **I -94** Note: Applicant must have an I-94 to be eligible because of the time and distance from the border restrictions for applicants who do not obtain an I-94.
B-1, B-2, C-1, C-3, D-1, and D-2	Unexpired foreign passport or I -94 Note: The applicant may not be able meet residency/domicile requirements.
C-2 Alien in transit to U.N. Headquarters district. Travel limited to 25 miles radius of Columbus Circle in New York, NY	This status is restricted to New York, NY and not eligible for a Texas driver license under the domicile/residency requirements.
E-1, E-2, and E-3	Unexpired foreign passport or I -94
E-2 CNMI Treaty-investor and dependents in Commonwealth of the Northern Mariana Islands	This status is limited to persons entering the Commonwealth of the Northern Mariana Islands (CNMI) and is not eligible for a Texas driver license (8 CFR § 214.2(3)(23)).
F-1 Foreign academic student	Unexpired foreign passport or I -94 or I-20

Category	Acceptable Documents
F-2 Dependent on F-1	Unexpired foreign passport or I -94
F-3 Commuter Student from Canada or Mexico	This status is for commuters from Mexico or Canada and is not eligible for a Texas driver license under the domicile/residency requirements.
G-1, G-2, G-3, G-4, and G-5	Unexpired foreign passport or I -94 Note: Issuance cannot occur unless applicant presents a letter from US Department of State approving the issuance of a DL/ID.
H-1B, H-1B1, H-1C, H-2A, H-2B, H-2R, H-3, H-4, and I	Unexpired foreign passport or I -94
J-1 Exchange visitor (may be student, trainee, work/travel, au pair, etc.)	Unexpired foreign passport or I -94 or DS-2019
J-2 Dependent of J-1 exchange visitor	Unexpired foreign passport or I -94
K-1, K-2, K-3, K-4, L-1, L-1A, L-1B, and L-2,	Unexpired foreign passport or I -94
M-1 Non-academic student	Unexpired foreign passport or I -94 or I-20
M-2 Dependents of non-academic students	Unexpired foreign passport or I -94
M-3 Commuter Student from Canada or Mexico	This status is for commuters from Mexico or Canada and is not eligible for a Texas driver license under the domicile/residency requirements.
N-1 through N-7 (NATO) North American Treaty Organization Representatives and dependents	Unexpired foreign passport or I -94
N-8, N-9, O-1, O-2, O-3, P-1, P-2, P-3, P-4, Q-1, Q-2, Q-3, R-1, R-2, S-5, S-6, S-7, T-1, T-2, T-3, T-4, T-5, TN-1, TN-2, TD, U-1, U-2, U-3, U-4, U-5, V-1, V-2, and V-3	Unexpired foreign passport or I -94

Category	Acceptable Documents
WB* Visitor for business (visa waiver program)	Unexpired foreign passport with admission stamp annotated "WT/WB" or I -94 Note: The applicant may not be able meet residency/domicile requirements.
WT* Visitor for pleasure (tourist in visa waiver program)	Unexpired foreign passport with admission stamp annotated "WT/WB" or I -94 Note: The applicant may not be able meet residency/domicile requirements.

*Visa waiver program countries: Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, and the United Kingdom.